

1906-033 Chancery Cause: A. B. Levasy & vs. Mariah Levasy &  
Lee Co.

Folder 1 of 3

Fletcher, Roberts, Surgener, Livesay, Baker, Vanzant, Ewing, Jaynes

CA-Estate Dispute  
T-Property

Will: 1904 ; Stephen S Surgener ; Tenn.

-Deed



To the Hon. H. A. W. Skeen, Judge of the Circuit Court for  
Lee County, Virginia:

Humbly complaining your orator and oratrix A. B. Levasy and  
Almira Fletcher, citizens of the State of Tennessee, would respectfully  
represent and show unto your honor, that their grand-father, S.S.  
Surgener, departed this life in said County of Lee, intestate, on the  
4th day of July, 1904, seized and possessed of a valuable estate, both real  
and personal, in the State of Virginia; that on the \_\_\_\_\_ day of \_\_\_\_\_  
1904, A. B. Surgener, a son of the said decedent, and one of the  
heirs of the said estate, was appointed and qualified, before the County  
Clerk of the said County, as administrator of the said personal estate, and  
took charge thereof; that the said S. S. Surgener, in his life time advanced  
to some of his children and his widow considerable portions of his real  
~~estate~~ and personal estate, so that at the time of his death he owned  
only a small tract, or parcel of land, containing seven or eight acres, be-  
ing a portion of his home place, and very valuable, and some personal  
estate; <sup>which descended to his heirs at law</sup> that the said real estate is not susceptible of partition among  
the heirs of the said estate, being so small in acreage, <sup>it would be to the interest of all parties</sup> and that the same  
should be sold and the proceeds distributed among the parties entitled  
thereto. Your orator and oratrix will further represent and show unto  
your honor that the said decedent, at the time of his death, left a widow,  
Elizabeth Surgener, and Mariah Levasy, nee Surgener, wife of M. D.  
Levasy; Sarah Roberts, nee Surgener, wife of Andrew Roberts; Nancy  
Levasy, nee Surgener, wife of O. P. Levasy; S. R. Surgener, A. B. Surgener,  
<sup>M.</sup> ~~David~~ Surgener, a grand-son, and son of Samuel Surgener, deceased,  
and your orator and oratrix, who are grand-children of the said decedent  
and children of Mary A. Levasy, nee Surgener, deceased, and who was the  
wife of L. W. Levasy, his only heir <sup>at law</sup>, to whom his estate descended;  
that the said David Surgener is an infant under the age of twenty one  
years, and resides in the State of Texas.

Your orator and oratrix will further represent and show unto  
your honor, that, as before stated, the said S. S. Surgener, made  
advancements of a considerable portion of his estate, both real and person-



al, in his life, time to the said Mariah Levasy, Sarah Roberts, Nancy Levasy, S. R. Surgener, and A. R. Surgener; that by deed recorded in Lee County Clerk's Office May 20th, 1901, deed book 37, page 428, he conveyed to ~~said~~ *Callie Surgener wife of* A. R. Surgener *and the lawful heirs of said A. R. Surgener* a tract of fifty acres of land for the consideration, as stated in said deed, of \$425.00, and the support of the said Elizabeth Surgener, during her natural life, in which deed the said Elizabeth joins, and in which deed it is provided that the said support and maintenance shall be here entire interest in his real estate; that no part of the said \$425.00 has been paid, and the same should be paid to said estate, or accounted for by said A. R. Surgener as an advancement, and your orator and oratrix allege that said tract of land of 50 acres was well worth \$2000.00, and should be so accounted for by said A. R. Surgener at that price, subject to a reasonable reduction for the support and maintenance of the said Elizabeth Surgener. A copy of said deed is herewith filed as a part hereof, marked "A"; that the said S. S. Surgener by deed, afterwards conveyed to <sup>said</sup> A. R. Surgener, another tract or parcel of land for the consideration, as stated in said deed, of \$350.00, - \$200.00 part thereof to be paid one year after the death of the said grantor, without interest, and the residue of \$150.00 to be paid to the said David Surgener when twenty-one years old, no part of which purchase money has been paid, and your orator and oratrix allege the said land is well worth the sum of \$800.00, and should be so accounted for by said A. R. Surgener as an advancement, or the purchase price therefor paid to the administrator. A copy of said deed is herewith filed as part hereof marked "B", and the said S. S. Surgener made other advancements to the said A. R. Surgener in money and personal property, but the amount thereof they cannot state; that the said S. S. Surgener conveyed to the said Nancy E. Levasy a tract of 150 acres of land in consideration of love and affection, and \$900.00 in hand paid and to be paid. This tract of land was well worth \$2000.00 and we do not know whether any part of the \$900.00 has been paid or not, in any event, the said grantee should account for at least \$1100.00 on account of this transaction as an advancement, even if the \$900.00 has been paid; a copy



of said deed is herewith filed as part hereof marked "C"; that the said S. S. Surgener also conveyed to the said Nancy E. Levasy and O. P. Levasy, her husband, jointly, another tract of land, lying in Lee County Virginia and Hancock County, Tennessee, for the consideration of \$1650.00, \$919.33 in hand paid and vendor's lien retained to secure the payment of \$730.67 the residue, *which lien has never been satisfied or released on the record,* but as to whether the said residue of the said purchase money has been paid ~~or not~~ they are not advised, and they ask that the said grantees be required to answer and show how this is, and if not paid, that the same, or such part thereof as remains unpaid be collected by the administrator and accounted for by him. A copy of said deed is herewith filed as a part hereof, marked "D"; that the said S. S. Surgener by deed dated October 10th, 1903, conveyed to the said Mariah Levasy a tract of land, as and for her entire interest in his estate, making certain reservations therein. *+ made other advancements to to her the said Mariah,* A copy of said deed is herewith filed as part hereof marked "E"; *+ real estate* that the said S. S. Surgener advanced to the said Sarah Roberts, in money and property, an amount equal to her entire interest in his estate; that the said S. S. Surgener advanced to the said S. R. Surgener \$500.00 in money and made other advancements to him the amount and value of which they can not state; that the said S. S. Surgener made no advancement to Mary A. Levasy, deceased, the mother of said complainants, *nor to your orator or oratrix at any time,* in her life time, and he made no advancements to the said Samuel M. Surgener, deceased, in his life, nor to his son, the said David Surgener at any time.

Now the object of this suit is to have a full and complete settlement and distribution of the estate of the said S. S. Surgener, deceased; to have a settlement of the account of A. R. Surgener, as administrator of said estate and an accounting by him for all the personal estate that came, or by due diligence, should have come, into his hands as such administrator; to have the advancements by said decedent to any of his heirs ascertained, and the said real estate left by said decedent sold free from dower, and the proceeds thereof, together with the personal estate left by said decedent, and the advancements, brought into



hotchpot, and the entire estate, real and personal, properly distributed, and the heirs equalized in so far as the same can be done, and that the cost of this suit be paid out of said estate, including an attorney's fee of \$50.00 to Orr and Noel, Attorneys for complainants.

To this end they make the said Elizabeth Surgener, Mariah Levasy Sarah Roberts, Nancy Levasy, S. R. Surgener, A. R. Surgener, administrator of S. S. Surgener, deceased, and in his own right, and David Surgener, the <sup>defendant</sup> parties to this bill, and ask that they be required to answer the same, but not on oath, answering under oath being expressly waived; that <sup>an</sup> order of publication be made/ posted and published against the said Mariah Levasy S. R. Surgener and David Surgener who are non-residents of this State, and that a Guardian Ad Litem be appointed to appear and answer for the said David Surgener who is an infant. And upon a hearing that the relief above prayed for be granted, and all such other further and general relief may be afforded your orator and oratrix as the nature of their case may require, or to equity shall seem meet. And your orator and oratrix will ever pray &c.

Orr & Noel p.q.



Clerk, Epping \$13.97  
 " " - 15.00 Ret.  
 Sheriff - 2.80  
 G. A. L. - 5.00  
 " " - 7.60  
 Benno, Gains - 72.00  
 " " - 75.00 Ret.  
 Witness -  
 Henry Baker - .50  
 Estimated - \$117.62  
 " " - 10.00  
 \$127.62

A. B. Leuasy, et al.  
 vs Bill in Chy.

Elizabeth Surgenor  
 - et al.

1904/1 St. Nov. R. Bill filed.  
 Shy. Expects any change defts  
 2nd 100 Rules. L. V. Gaudin  
 1st Dec. Rules. L. V. Gaudin  
 appd L. V. G. for input defts  
 and his son - filed. O. P.  
 Cause filed & Cause set for hear-  
 ing by Plffs.

B. B. H. McKersan, D. S.  
 \$1.50. Aug 5<sup>th</sup> 1905.



To the Hon. H. A. W. Skeen, Judge of the Circuit Court  
for Lee County, Virginia:

Humbly complaining your orator, A. B. Livesay, and your oratrix Elmira Fletcher, would respectfully represent and show unto your honor that at the first November Rules, 1904, they filed their original bill in this honorable court against Elizabeth Surgener, et al, and which is still pending in the Court, the object of which bill was to have a full and complete settlement and distribution of the estate of S. S. Surgener, deceased; to have a settlement of the account of A. R. Surgener as administrator of the said estate and an accounting by him for all the personal estate that came, or by due diligence, should have come, into his hands as such administrator; to have the advancements by said decedent to his heirs and the real estate left by said decedent sold and the proceed thereof together with the personal estate brought into hotchpot and the entire estate, both real and personal, properly distributed and the debts paid. The cause was regularly proceeded with and on the 4th day of May, 1905, Special Commissioner A. M. Goins, who had taken an account in the cause, filed his report, and by decree entered in said cause on the 22nd day of february, 1905, James W. Orr was appointed <sup>a</sup> commissioner to sell a certain tract or parcel of land left by the said decedent at his death, and on the first day of May, 1905, said commissioner Orr filed his report of said sale. On the 24th day of May, 1905, a decree was entered in said cause confirming the report of said Commissioner Goins, except as to the sum of \$200.00 due by the said A. R. Surgener to said estate, which by said decree was directed to be applied in a manner differenct from that reported by Commissioner Goins, and the report of the sale by the said Orr <sup>was</sup> approved and confirmed. By the report of the said A. M. Goins, Commissioner, it was ascertained that there was in the hands of the said administrator the sum of \$898.47; and by reference to the report of the said Orr, Commissioner, as aforesaid, it will be seen



that the sum arising from the sale of the said real estate was \$625.00, from which sum, the cost of the suit and commission on sale was to be deducted, and when done will leave in said commissioner's hands about the sum of \$475.00 to be applied to the payment of the debts, or for distribution among the heirs of the said estate, and by said decree of May 24th, 1905, said debts were decreed against the said administrator, which will fully appear from said decree, and it was further decreed by the court that after the payment of the cost of suit and the debts aforesaid, that there should then be paid to your orator, A. B. Livesay, the sum of \$150 to your oratrix, Elmira Fletcher, \$150; to S. R. Surgener, \$200, ( \$50 of which had already been paid to him by said administrator); to Sarah Roberts \$200.00 (\$50 of which had been paid by said administrator) and to David Surgener \$150. These sums being the amount provided for them in said commissioner Goins' report. And as to the residue of the estate of the said S. S. Surgener, deceased, the same should be divided into five equal shares, and to Nancy E. Livesay should be given one share, to S. R. Surgener, one share, to Sarah Roberts one share, to David Surgener one share, and to your orator and oratrix jointly one share; and that the said Commissioner, James W. Orr, and the administrator of the estate of S. S. Surgener, deceased, should act in concert in paying out the funds in their hands, or that might come into their hands so as to carry out the terms of the said decree. And it was further ordered that A. R. Surgener, administrator as aforesaid, should execute before the clerk of the court, a new bond as such administrator in the penalty of \$1500.00 conditioned for the faithful performance of the said trust, and unless the said bond was executed within thirty days from that date of said decree, then the said clerk was authorized to appoint another administrator of said estate, and the authority of the said A. R. Surgener as such administrator should from that date be revoked, and the said A. R. Surgener was by said decree restrained from receiving any further funds due the said estate until he



should execute the said bond as therein provided.

Now your complainants will further represent and show unto your honor that no part of the funds thus found to be in the hands of the said administrator, ~~or~~ in the hands of the said Commissioner Orr, has been paid, either to the creditors of the said estate on the said debts, or to the heirs of the said estate as provided in said decree. The funds arising from the sale made by commissioner Orr, the sale being on time, are not yet in his hands, but as to the said administrator, your complainants allege that the said \$898.47 is in his hands, or should be, and that he has failed and refused to pay any part thereof to the said creditors ~~or~~ to the said heirs of the said estate. The said administrator was appointed by the clerk of your Honor's Court and qualified as such administrator on the 23rd day of September, 1904, and executed bond before the said clerk in the penalty of \$600.00 waiving the homestead exemption, with S. C. Surgener, (his wife) and R. G. Livesay, his sureties. A certified copy of which bond is herewith filed as part hereof marked "Bond" Your complainants are advised, and therefore allege, that the said A. R. Surgener is insolvent. Never-the-less, he has not only failed to execute the new bond as required by the decree of the court, but in violation thereof has been receiving further funds due the said estate.

Now, the object of this supplemental bill, taken in connection with the original bill, which original bill and the complaints and allegations therein contained are here reiterated and made a part of this bill, the same as if here inserted and set out at large, is to obtain a decree against the said A. R. Surgener, administrator as aforesaid and the said S. C. Surgener, and R. G. Livesay his sureties, for the amount due each of the creditors of the said estate, as shown by Commissioner Goins' report, and the decree confirming the same, and in favor of each of the heirs of the said estate for the amount due them respectfully against the same parties, which should be credited, however, with, or subject to, the net amount of the funds in the hands of Commissioner Orr arising from the sale of the said real estate, which should be applied in like manner; and that your honor appoint a receiver in this cause to take charge of these funds and bring them together and properly



distribute and disburse the same according to your honor's decrees in the case; and that the said receiver be empowered to collect, if necessary by execution, <sup>or otherwise</sup> any and all funds in the hands of the said administrator, or for which he and his said sureties are liable.

To this end your complainants make the said A. R. Surgener, administrator of the estate of the said S. S. Surgener, deceased, S. C. Surgener and R. G. Livesay, parties defendants to this supplemental bill and ask that they be required to answer the same, but not on oath, answer under oath being waived; that on a hearing the relief above prayed for be granted your complainants, together with all such other, further and general relief as may be necessary and to which the parties in interest may be entitled. And your orator and oratrix will ever pray &c.

Chas. Vail, Jr.



A. B. Levasy et al.  
vs { Supplemental Bill  
Mariah Levasy et al.

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1905. 1<sup>st</sup> Sept. Rules.  
Bill filed Sp. 4-  
euted + D. N.

" 2<sup>nd</sup> Sept Rules

D. N. Confirmed  
+ Cause set for  
hearing,



TO THE HON. H. A. W. SKEEN, JUDGE OF THE

CIRCUIT COURT OF LEE COUNTY, VIRGINIA.

The separate answer of Elizabeth Surgener, widow of S.S. Surgener, deceased, to a bill in Chancery filed in your Honor's Court by A. B. Livesay and others against your respondent and others, for answer to said bill, or so much thereof as she is advised it is necessary for her to answer, answering she says:

That it is true that she is the widow of the late S.S. Surgener, deceased, and that S.S. Surgener in his like time advanced to some of his children portions of his real and personal estate, but she denies that he advanced to her any part of his real estate.

Your respondent admits that it is true that her and her husband conveyed to Callie, wife of A. R. Surgener and to A.R. Surgener the two tracts of land described in complainant's bill, but she is advised and believes that the said A. R. Surgener and wife paid for said land a valuable consideration, and that on her part and that of her husband it was not intended as an advancement.

Your respondent denies that she has relinquished her dower interest in any of the real estate of which her husband, S.S. Surgener died seized and possessed, or to which she is entitled by reason of his seizure during coverture, and she here alleges that she is entitled to a dower in the seven acre tract of land described in complainant's bill, ~~and is entitled to dower in the tract of land conveyed by her husband to Mariah Livesay.~~ And your respondent further alleges that if the said Nancy Livesay claims under the deed made to her in 1899 that she is entitled to her dower in that tract of land, but that if she claims under the deed filed with complainant's bill, dated November 26th, 1895, that she is entitled to a part of the purchase money on said tract of land because she here alleges that 65 acres of said tract of land was her own individual separate estate, and that the unpaid purchase money recited in



said deed was to have been paid to her for her said interest, but that no part has ever been paid to her, or to any one for her, and your respondent further denies that said Nancy Livesay or O. P. Livesay either one has ever paid the \$750.00 which he undertook to pay in said deed, but alleges that they still owe to your respondent and to her husband's estate that amount of money as they hold said lands under said deed, and your respondent is advised that the second deed made for said lands is void and that they will have to comply with the terms of the first deed.

Your respondent further denies that her husband is indebted to Nancy Livesay and O. P. Livesay in the sum of \$200.00, or any other sum by reason of any of the transactions of the sale of the said tract of land, or any of the transactions connected with the Powell's Valley Bank as set out in their said answer.

And now having answered as fully as she is advised it is necessary for her to answer, she prays that commissioners be appointed to assign her dower in the lands of her deceased husband to which she is entitled, and to all other, further relief generally that her case may require or to equity may seem meet, and she prays to be hence dismissed with her reasonable cost in this behalf expended, and she will ever pray &c.

*M. G. Ely, Jr. d.*

*The foregoing answer is excepted to as to the allegation, in large and that "A. R. Surgenor & wife paid for said land a valuable consideration" because no defense to plaintiff's claim. The consideration may have been a valuable one and yet not one half of the real value of the land. Dec 22<sup>nd</sup> 1914. On X Hall, for Plffs.*



A. B. Levesay & Co.  
ns { answer of  
    { Elisabeth Surgenor  
    { Elisabeth Surgenor &  
    {

Filed in open Court  
and by leave there of  
Dec. 22<sup>nd</sup> 1904

H. T. Ewing.  
Clerk.



To the hon. H. A. W. Skeen, Judge of the Circuit court for Lee County, Virginia:

The separate answer of David Surgener, an infant under the age of twenty-one years, by L. T. Hyatt, his Guardian Ad Litem, assigned to defend him in this suit to a bill of complaint exhibited against him in the Circuit Court for said County, by A.B. Livesay/ et al.

The respondent reserving to himself the benefit of all exceptions to said bill, for answer thereto, or to so much thereof as he is advised that it is material he should answer, by his said Guardian Ad Litem, he answering says:

That, he is an infant of tender years, and by reason of his infancy, is unable to understand and take care of his rights and interests. He therefore, by his said Guardian Ad Litem, commends himself and his interests to the protection of the court, and prays that no decree may be entered in said cause which will prejudice his interests in said cause. And having fully answered the said respondent, prays to be hence dismissed with his reasonable costs in this behalf expended. And he will ever pray &c.

L. T. Hyatt  
Guardian Ad Litem for David Surgener.

State of Virginia) to-wit:  
County of Lee )

This day personally appeared before me, H. C. T. Ewing, Clerk of the Circuit Court for said County, L. T. Hyatt, Guardian Ad Litem for David Surgener, whose answer is above written, and made oath that the statements contained in said answer, so far as is made upon his own knowledge are true, and so far as made from the knowledge or information derived from others that they are believed to be true.

Given under my hand this the 6th day of December, 1904.

H. C. T. Ewing Clerk.



A. B. Leary et al  
vs  $\frac{1}{2}$  Sus of G. A. L.  
Aligakth Sungenor et al

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Filed 1st Dec 1904. H. E. King  
Clerk.



To the Hon. H. A. V. Skeen, Judge of the Circuit Court for Lee County:-

The separate answer of Nancy E. Levisay to a bill in chancery filed in your honor's court by A. B. Levisay et al, against your respondent and others.

For answer to the said bill, or so much thereof as your respondent is advised she should answer, answering she says:

That it is true that she is a <sup>daughter</sup> of S. S. Surgener, deceased, and that the several parties set out in said plaintiff's bill as the heirs of the said decedent are the true and lawful heirs of said decedent.

Your respondent, however, denies that she has ever received one single cent from said S. S. Surgener as an advancement; <sup>and</sup> ~~but~~ alleges that she has never received any thing from her father's estate either before or since his death. It is alleged in the said plaintiff's bill "That the said S. S. Surgener conveyed to Nancy E. Levisay a tract of 150 acres in consideration of natural love and affection and \$900 in hand paid and to be paid. This tract of land is well worth \$2000 and we do not know whether any part of the \$900.00 has been paid or not, in any event the said grantee should account for at least \$1100 on account of this transaction as an advancement, even if the \$900 has been paid; a copy of said deed is herewith filed as part hereof marked "C"; that the said S. S. Surgener also conveyed to the said Nancy E. Levisay and O. P. Levisay, her husband, jointly, another tract of land, lying in Lee County Va. and Hancock Co. Tenn. for the consideration of \$1050.00, \$819.88 in hand paid and vendor's lien retained to secure the payment of \$730.67, the residue, which lien has never been satisfied or released upon the record, but as to whether said residue of said purchase money has ever been paid they are not advised, and they ask that said grantee be required to answer and show how this is." A revelation of the facts concerning the above named deeds show how little said plaintiffs know as to the transactions had between your respondent and her husband, said O. P. Levisay, and the said S. S. Surgener; and your respondent will



relate the facts in reference to said deeds as near as she can. About the year 1882 your respondent's husband, O.P. Levisay contracted a portion of the lands mentioned in said deed from S.S. Surgener and agreed to pay him the price of \$700 therefor, and when this purchase money was paid your <sup>respondent's</sup> ~~husband~~ husband contracted another tract of land from said S.S. Surgener for the price of \$600, and these two tracts of land together embraced the lands conveyed by the deed of Nov. 26, 1895, filed with plaintiff's bill as exhibit "D"; the first tract contracted for was about 100 acres and S.S. Surgener gave said O.P. Levisay a title bond therefor, but for the second named tract no title bond was taken, or other writing. The last named tract contained beside some ridge land about 3 acres of bottom land, and after your respondent's husband had paid some of the purchase money, and S.S. Surgener came to make a deed for the land he refused to make the deed for the bottom land unless your respondent's husband would pay him \$360 more than the contract price, and this your respondent's husband agreed to do, making as the purchase price of this ~~xxx~~ tract of land the sum of \$1650.00. Your respondent's husband and your respondent kept paying on the land until they had paid all but \$200.00, and the said S.S. Surgener agreed to take back \$200 worth of the land and cancel your respondent's husband's note. No reconveyance of the land was made to said S.S. Surgener, but said S.S. Surgener made another deed to the same land excepting that portion of the land that was agreed to be taken back, and the deed of Oct. 17, 1896, filed with the plaintiff's bill as exhibit "C" <sup>is the deed that was made</sup>. Your respondent denies that the two deeds above mentioned convey separate tracts of land, but they convey the same land, the only difference being, as above stated. And your respondent alleges that the whole of the purchase money as above named, to wit the sum of 1650 less the \$200 worth of land returned has been fully paid; and your respondent alleges that this matter of the transaction in reference to the resale to S.S. Surgener for the \$200 worth of the land has not been fully settled; about



~~about~~ the time the resale of the \$200 worth of land was made back to S.S. Surgener, or the contract of resale was made, your <sup>respondent</sup> ~~xxxx~~ and her husband and the said S.S. Surgener borrowed from the Powell's Valley bank the sum of \$400, the said S.S. Surgener got \$200 of this money and your respondent and her husband the other \$200, but it was stated at the time that if your respondent and her husband should pay the said \$200 to the bank that S.S. Surgener received that then your respondent and her husband should have the \$200 worth of land back; but since that agreement was made the said S.S. Surgener sold the \$200 worth of land to a man by the name of Baker, and so said S.S. Surger's estate is entitled to pay said \$200 at the Bank, as well as the interest which your respondent's husband has had to pay on renewals of the note since. Your respondent will further state in reference to the said transaction at the Bank that at the time said \$400 note was executed said S.S. Surgener owed a note to the bank of \$50.00, and when the \$400 note was renewed this \$50 note was also embraced in said note, so upon the said indebtedness at the bank said estate is due the sum of \$250, with the interest which your respondent and her husband has paid upon renewals.

Your respondent alleges that every cent of said purchase price has been paid for said land, and that she and her husband paid a full and fair price for said land, and no part thereof should be charged to her as an advancement; *nor was so intended by S.S. Surgener*

In reference to the advancements set up in said plaintiff's bill your respondent denies any advancement to her, but she is advised that Maria Levisay has been advanced the sum of \$1250. in a store house and a piece of land at Kile's Ford Tenn; and that A.R. Surgener has been advanced about \$1000 in money, personal property and stocks of goods furnished to him by his father; and that S.R. Surgener has been advanced about \$750 in cash and \$200 in a note on S.M. Surgener.

Your respondent joins in the prayer for a commissioner to settle the account of the administrator, and ascertain the several



advancements; and at this point suggests that the bond given by the said A.R. Surgener is insufficient and insecure. The amount of said bond is only \$600, and the only surety signing said bond is R.G. Levisay, and he has no property in his own name. The bond has the name <sup>the wife of</sup> of A.R. Surgener to said bond but it was not signed by her but by her husband, without a legal authority to do so, and your respondent asks that a rule be awarded <sup>d</sup> against said A.R. Surgener to show cause why he should not give further security and better bond; and may all other and further relief be granted your respondent that the nature of <sup>her</sup> ~~his~~ cause and good conscience requires and she will ever pray &c.

Pennington Bros PD.



Amey, E. L. & Co., Inc.

Advs 3 of A. L. & Co., Inc.

A. L. & Co., Inc.

Filed in open Court  
and by leave there of  
this Dec 22<sup>nd</sup> 1904.

H. C. T. Ewing, Clerk

Pennington Bros.

ATTORNEYS AT LAW

JONESVILLE AND PENNINGTON GAP VA.



TO THE HON. H. A. W. SKEEN,

JUDGE OF THE CIRCUIT COURT FOR LEE COUNTY, VIRGINIA.

The separate answer of A. R. Surgener, as administrator of the estate of S. S. Surgener, deceased, <sup>and</sup> in his own right to a bill in Chancery exhibited in your honor's Court by A. B. Livesay and others against your respondent and others, for answer to said bill, or so much thereof as your respondent is advised he should answer, answering he says:

That it is true that he qualified as administrator of S. S. Surgener, deceased, and that he is a son of the said decedent, and one of the heirs of the said estate. Your respondent alleges that there has come into his hands as administrator something like \$300.00, and that this is all the personal estate of which his father died seized and possessed. Your administrator has been informed that there are debts against said decedent's estate, a sum more than sufficient to consume all of said personal estate, and that the seven or eight acres described in complainant's bill would have to be sold to pay the indebtedness of said estate. Your respondent admits that his father, by deed as described in complainant's bill, conveyed to Callie Surgener, his wife, a tract of land of fifty-six acres, for ~~which~~ the sum of \$425.00, and the support of the said Elizabeth Surgener during her natural life, but your respondent denies that said conveyance was in any way an advancement to him as one of the heirs of the said estate, but on the contrary his said wife with his helpas paid in full the sum of \$425.00, and paid the same to S. S. Surgener in his life time, and is, and has been supporting and maintaining Elizabeth Surgener. Your respondent alleges that he has paid more than a valuable consideration for said tract of land, or that his wife has. Your respondent further admits that it is true that his father deeded to him another tract of land in consideration of the sum of \$350.00, and that said amount has not been paid, but that your respondent is ready and willing to pay the same when



it becomes due. He alleges that he has paid a valuable consideration, and denies that there was any advancements or gift to him in conveying said tracts, but that for both tracts of land he paid <sup>the full value &c,</sup> in cash <sup>↑</sup> more than their assessed cash value.

Your respondent further desires to state in answer to the answer of Nancy C. Livesay filed in this cause, which <sup>he</sup> she supposes she will ask to be treated as a cross-bill. He denies that she has paid all the consideration set out in the deed made to her and O. P. Livesay, November 26th, 1895, and alleges, most emphatically, that all the said purchase money has not yet been paid, and he further denies that the said decedent's estate is indebted to O. P. Livesay and Nancy Livesay in the sum of \$250.00, or any other sum, but on the contrary they are yet indebted to said estate or to respondent's mother in a considerable sum as the unpaid purchase money on said lands contained in the aforesaid deed.

And now having answered said bill as fully as he is advised it is necessary for him to answer, prays to be hence dismissed with his reasonable cost in this behalf expended. And he will ever pray &c

*Wm. H. Ely, Jr.*

*The foregoing answer is excepted to as to the allegation on page 2, that A. R. Surger paid for both tracts of land "more than their assessed value". because said allegation sets up no defense to plaintiffs bill. The assessed value of the land has nothing to do with determining its real value. Decr 22<sup>nd</sup> 1904.*

*Wm. H. Ely, Jr. for Plffs.*



A. B. Lunsay et al.  
vs. { Answered  
      { A. M. Sargunne  
      { Elizabeth Sargunne et al.

---

Filed in open Court  
and by leave thereof  
this Dec. 22<sup>nd</sup> 1904.

H. T. Ewing,  
Clerk.



To the Honorable H.A.W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

The Separate answer of Mariah Livesay, nee Surgener, wife of M.D. Livesay, to a bill in chancery exhibited against her and others in your Honor's Court by A.B. Livesay and others.

For answer to said bill, or to so much thereof as she is advised that it is material or necessary that she should answer the same, answering she says:

That it is true that she is a daughter of S.S. Surgener, deceased, and that it is further true that the said parties set out in complainants' bill, as such, are his true and lawful heirs.

Respondent says that it is true that by deed dated October the 10th, 1908, her said father, the said S.S. Surgener, deceased, conveyed to her a small tract of land containing about seven acres, in which he retained a life estate; but respondent denies that her said father ever made any other or further advancements to her in any manner. Respondent admits that it is true that the said land conveyed to her by her said father was intended to be in full satisfaction of her part or portion in the estate of her said father, that she accepted the same as such, and <sup>she</sup> does not make any claim to any other property, whether real or personal, left by her said father at the time of his death, and does not desire to come into or participate in any division of her said father's estate. She knows that this small tract of land is all that her father desired her to have and she wishes only to take that and nothing more.

Respondent further says that, as she desires to accept the said land conveyed to her by her said father as and for her full part in his estate, and not to participate further in any division thereof, that she is in no way interested or concerned in advancements made by her said father to her brothers and sisters, and she does not deem it necessary or pertinent that she should reply to said bill in reference to said advancements.

Respondent is advised that Elizabeth Surgener, widow of the said S.S. Surgener, in her answer filed in this cause, has set up a claim that she is entitled to be assigned dower in the tract of land conveyed to your respondent, and respondent suppose that said answer is to be treated as a cross-bill as to this matter.



Respondent most emphatically denies that the said Elizabeth Surgener has the right to be assigned dower in said tract of land. By deed dated the 20th day of April, 1900, said S.S. Surgener conveyed certain lands to Callie Surgener, wife of said A.R. Surgener and the heirs of A.R. Surgener, ~~a tract of land~~, a part of the consideration for which conveyance was that the vendees should furnish a good and complete maintainance for the said Elizabeth Surgener during her life, and said deed further states that this maintainance is by mutual agreement between the said Elizabeth and the said S.S. Surgener to be the said Elizabeth's entire interest in his real estate. Said deed was signed by the said Elizabeth as well as the said S.S. Surgener, and said provision in said deed was intended to be in lieu of her dower in all the real estate of the said S.S. Surgener, and she accepted the same as such, and respondent is advised that she has been accepting the benefits of said support and maintainance given her under said deed, since the death of her said husband. A copy of said deed is filed by the plaintiffs with their bill in this cause, as exhibit "A". This provision made by the said S.S. Surgener for the said Elizabeth, has never in any way been repudiated or relinquished by her, and your respondent is advised that she cannot be entitled to claim the same and also be assigned dower in other lands.

Now if mistaken in this contention, respondent will show your Honor that the deed executed to her was with covenants of general warranty, together <sup>with</sup> covenants of freedom from encumbrance, and should the widow assert and succeed in establishing a ~~claim~~ <sup>claim</sup> to dower in said tract of land there would be a breach of said warranties, and she is advised that she would be entitled to recover a sum equal to the value of said dower from said estate, and if necessary she prays that this answer may be treated as a cross bill for the assertion of said claim.

And now having fully answered, she prays to be hence dismissed, with her reasonable cost in this behalf expended.

Linnell & Cridlin p. d.



A. B. Linsay et al  
v. { In Chy.

Elizabeth Linsay et al

Answer of Mariah Linsay



To the Hon. H. A. W. Skeen, Judge of the

Circuit Court for Lee County, Virginia.

The separate <sup>answer</sup> of Sarah Roberts to a bill in Chancery filed in your Honor's Court by A. B. Livesay and others against your respondent and others. For answer thereto, or so much as she is advised it is necessary for her to answer, answering she says:

That it is true that she is one of the children and heirs at law of S. S. Surgener, deceased.

Your respondent believes that her father, in his life time made advancements to some of his children, but as to the amounts she does not know.

Your respondent denies that her father ever made any advancement to her in his life time, either in personal property or real estate, and that she has received nothing.

She therefore joins in the prayer of the complainant and asks that the question of advancements be ascertained and settled, and that she be allowed her due proportion of her father's estate, and she pray hence to be dismissed with her reasonable cost in this behalf expended, and she will ever pray &c.

*m. G. Ely, p.d.*



A. B. Levesay et al.

vs. { Answer of  
Sarah Roberts.

Elisabeth Surgen et al.

Filed in open Court  
and by leave thereof  
this Dec. 22<sup>nd</sup> 1904

H. T. Ewing,  
Clerk.



A. B. Livesay, et al,

Plaintiffs.

vs.

In Chancery.

Mariah Livesay, et al,

Defendants.

This cause came on again to be heard upon the papers formerly read in the cause and the report of James W. Orr, commissioner filed in the cause, February 14th, 1906, and the deed therewith to H. T. Baker, for a tract of seven or eight acres of land sold by said commissioner to said Baker and reserve<sup>ing</sup> the vendor's lien in said deed to secure the balance of unpaid purchase money, and was argued by counsel. And the said report and deed being unexcepted to, it is adjudged, ordered and decreed that the said report and deed be and are hereby confirmed, and that the said Baker have leave to withdraw said deed from the papers of this cause for recordation, and that he pay to the said commissioner \$5.00 for his service in making said deed, for which execution may issue. And the cause is continued.



A. B. Leary et al.

vs } Decree.

Mariah Leary et al.

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Entered in C.O.B.

# 8, page 131 &c -

Enter this decree.

Y. A. W. S. S. S.

Feb 27 1906.



A. B. Livesay, et al,

Plaintiffs.

vs.

In Chancery.

Mariah Livesay, et al

Defendants.

This cause came on again to be heard upon the papers formerly read in the cause, and the report of James W. Orr commissioner filed in the cause December 9th, 1905, and the report of R. L. Pennington, Commissioner of Accounts of this County, this day filed in the cause, and was argued by counsel.

and  
On consideration thereof, the said report of James W. Orr, commissioner as aforesaid, being unexcepted to, It is adjudged, ordered and decree that the said report, and the action of the commissioner therein reported, be and are hereby approved and confirmed. And it appearing to the court from the report of said Pennington, Commissioner of accounts, that the said Commissioner <sup>Orr</sup> and A. R. Surgener administrator of the estate of S. S. Surgener, deceased, have acted in concert, as directed by the decree entered in this cause at the May term, 1905, in paying out the funds in their hands, and that ~~have~~ come into their hands, <sup>in</sup> carrying out the said decree of <sup>the</sup> court, and paying the debts adjudged in said decree against said estate, and the amounts in said decree directed to be paid to the ~~said~~ heirs of said estate mentioned in said decree; and that the residue of the funds in their hands, after payment of debts, costs of suit and specified sums decreed to certain of said heirs, has been divided into five equal shares, and that said shares have been disbursed and paid over to the five heirs of S. S. Surgener, as in said decree directed, except the amount due to David Surgener, who is a minor under twenty one years of age. It is further adjudged, ordered and decreed that the action of the said commissioner and administrator in paying out and disbursing the funds in their hands, as shown by Commissioner Pennington's report, be and the same are hereby approved and confirmed. And that the said A. R. Surgener, administrator as aforesaid, pay the amount of \$150.00 in his hands due to the said David Surgener when he arrives at the age of twenty one years, and as to the prorata share of the said



David Surgener of \$126.80, the said administrator will pay it to the guardian of the said David Surgener, should there be one appointed, or to a receiver should there be one appointed to receive said sum, with interest from this date, and that the same be kept at interest for said minor until he arrives at the age of twenty-one years. And the action of the said administrator in paying a small judgment in favor of A. J. Baker not heretofore reported in the cause, is approved and confirmed, And it appearing from the report of the said Orr, Commissioner and the said R. L. Pennington, Commissioner of Accounts, that the purchase money notes executed by H. T. Baker for the land sold him by said Commissioner Orr, and that are not yet due, have been assigned by the said Orr, Commissioner, as aforesaid, to R. L. Pennington, in consideration of the said Pennington settling certain debts heretofore decreed in the cause against S. S. Surgener's estate, and that the said Pennington is willing for the land sold to said Baker to be conveyed to him by proper deed reserving a vendor's lien in his favor to secure the payment of said notes when due. It is further adjudged, ordered and decreed that James W. Orr, who is appointed a commissioner for the purpose do convey by proper deed, with covenants of special warranty, unto the said H. T. Baker, the said tract or parcel of land sold to him by said commissioner, and that he report his action hereunder to the next term of the court, and the cause is continued.

*And it is further ordered that the said report and statement of accounts by R. L. Pennington Commissioner of Accounts be reported by the clerk of this court in the proper book in his office. And the cause is continued.*



A. B. Linsay et al  
vs { Decree  
Mariah Linsay et al.

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Entered in C.B.  
No. 8, page 117ve.

Enter this decree,  
H. A. W. S. Linsay  
Decr 19<sup>th</sup> 1905



VIRGINIA,

At a Circuit Court continued and held for Lee County at the Court-house thereof on Wednesday the 24th day of May, 1905.

\*\*\*\*\* And it is further ordered that A. R. Surgener, Administrator of S. S. Surgener, deceased execute before the clerk of this Court a new bond as such administrator in the penalty of the sum of \$1500.00 conditioned for the faithful performance of his said trust, and unless the said bond is executed within thirty days, from this date, then the clerk of this Court is hereby authorized to appoint another administrator of the said estate, and the authority of the said A. R. Surgener, as such administrator shall from that time be revoked, and the said A. R. Surgener, is hereby restrained from receiving any further funds due the said estate until he shall have executed the said bond as above provided. And the cause is continued.

A Copy-Teste:

W. L. Ewing  
Clerk.



A. B. Linsay et al  
vs. J. Deere  
Marion Linsay et al

Executed by delivering  
a copy of the within  
deed to A. R. Linsay's  
wife. This June 7<sup>th</sup> 1906.

W. A. Owens D.S.  
For P. M. Ball S. L. C.



A. B. Livesay, et al,

Plaintiffs.

vs.

In Chancery

Mariah Livesay, et al,

Defendants.

This cause came on again to be heard upon the papers formerly read in the cause and the reports of Special Commissioner James W. Orr, filed May 1st, 1905, and A. M. Goins, Special Commissioner filed May 4th, 1905, and exceptions to said last named report endorsed thereon and was argued by counsel.

On consideration of all which, it is adjudged, ordered and decreed that the said report of James W. Orr being unexcepted to, and the sale therein reported, be and the same are hereby approved and confirmed. And that H. T. Baker, purchaser of the land sold by said commissioner take and hold the said land purchased by him as aforesaid, and a writ of possession of said land be awarded said purchaser to cause him to have the possession of said land upon his application to the clerk of this court for said writ and the said Orr, Commissioner as aforesaid will collect the purchase money notes for said land when the same becomes due, and will disburse the funds in his hands already received by him to the parties entitled thereto, ~~paying the cost of said writ including an attorney's fee of \$50.00 to Orr & Noel~~, and the commissions of sale, and report his action here under from time to time to the court. And it is further adjudged, ordered and decreed that the exceptions to the report of A. M. Goins, commissioner, <sup>be</sup> and the same are hereby over-ruled except as to the sum of \$200.00 due by A. R. Surgener to the estate of S. S. Surgener, deceased for the balance of the purchase price of the land conveyed to the said A. R. Surgener, which sum instead of being paid to S. R. Surgener is to be brought into the general funds of the estate, and the said report in all other respects is hereby approved and confirmed. And it is further adjudged, ordered and decreed that R. L. Pennington



administrator of the estate of H. J. Morgan, deceased, recover against t  
 the said A. R. Surgener, administrator of the estate of S. S. Surgener,  
 deceased \$52.50 part of the debt in said commissioner Goins' reporte men-  
 tioned with interest thereon from the 15th day of May, 1905, until paid,  
 and that the said Pennington administrator as aforesaid recover against  
 the said A. R. Surgener, administrator of the estate of S. S. Surgener,  
 deceased and Nancy E. Livesay the sum of \$367.50 with interest thereon  
 from the 15th day of May, 1905, until paid. This last recovery being  
 against the said Nancy E. Livesay as principal and against the said  
 administrator of the estate of S. S. Surgener, deceased as surety, the  
 said S. S. Surgener, deceased, be<sup>ing</sup> security for said sum in his life time;  
 that A. G. Hyatt, cashier, recover of the said A. R. Surgener, administra-  
 tor of the estate of S. S. Surgener, deceased, the sum of \$243.48 with  
 interest on \$241.56 part thereof from the 15th day of May, 1905, until  
 paid; and that Powell's Valley Bank recover of the said A. R. Surgener,  
 administrator as aforesaid on account of said S. S. Surgener, being secur-  
 ety for E. N. Brickley and others \$86.93 with interest on \$80.50 part  
 thereof from the 15th day of May, 1905, until paid. It is further  
 adjudged, ordered and decreed that after paying the cost of this suit and  
 the debts aforesaid, then there shall be paid to A. B. Livesay the sum  
 of \$150.00, to Almira Fletcher the sum of \$150.00 to S. R. Surgener, the  
 sum of \$200.00 ( \$50.00 of which is already paid to him) and to Sarah  
 Roberts the sum of \$200.00 ( \$50.00 of which has already been paid to her)  
 and to David Surgener \$150.00, being the amounts provided for them in said  
 commissioner Goins' report, and as to the residue of the estate of said  
 S. S. Surgener, deceased the same will be divided into five equal shares  
 and to Nancy E. Livesay shall be paid one share, to S. R. Surgener, shall  
 be paid one share, to Sarah Roberts shall be paid one share to David  
 Surgener shall be paid one share, and A. B. Livesay and Almira Fletcher  
 shall be paid one share jointly. And it is further adjudged, ordered



and decreed that the said James W. Orr, commissioner as aforesaid, and the administrator of the estate of S. S. Surgener, act in concert in ~~being~~ paying out the funds in their hands, or that may come into their hands, so as to carry out the terms of this decree. And it is further ordered that A. R. Surgener, administrator of S. S. Surgener, deceased execute before the clerk of this court a new bond as such administrator in the penalty of the sum of \$1500.00 conditioned for the faithful performance of his said trust, and unless the said bond is executed within thirty days from this date, then the clerk of this court is hereby authorized to appoint another administrator of the said estate, and the authority of the said A. R. Surgener as such administrator shall from that time be revoked, and the said A. R. Surgener, is hereby restricted <sup>divided</sup> from receiving any further funds due the said estate until he shall have executed the said bond as above provided, ~~and~~ the cause is continued.



A. B. Leary et al.  
vs Decree  
<sup>3</sup>  
Mariah Leary et al.

Entered in C. O. B.

No. 8 - page 59

Enter this decree  
for record  
May 24<sup>th</sup> 1905



A. B. Livesay, et al,

Plaintiffs.

vs.

In Chancery

*Maria B. Livesay et al*

Defendants.

This cause came on again by consent of parties, to be further heard upon the papers formerly read in the cause, and was argued by counsel. On consideration thereof, and it being admitted by the adult parties to this suit by their counsel, and by the guardian ad litem for the infant defendant, David Surgener, that the tract of seven or eight acres of land, owned by the said S. S. Surgener at the time of his death in the ~~bill~~ mentioned, will have to be sold and the proceeds of the sale brought into the estate for the payment of the debts of the said decedent, and for the equalization of the heirs of said estate, ~~by~~ agreement of the said parties. It is adjudged, ordered and decreed that James W. Orr, who is appointed a commissioner for the purpose, proceed to sell, free from dower, at the front door of the court-house of this County, to the highest bidder on a credit of ~~six and twelve months~~ <sup>one and two years</sup> time, the said tract or parcel of land, except as to the sum of two hundred dollars, which will be required to be paid in hand, and for the deferred payments bonds with good security will be required of the purchaser bearing interest from date. Said commissioner, before selling, will advertise the time, terms and place of sale for at least ~~thirty~~ <sup>twenty</sup> days, by written advertisements, posted at the said front door of said court-house, and in the vicinity of said land, and will execute bond before the clerk of this court in the penalty of \$1200.00, conditioned according to law, and he will report his action hereunder to the next term of this court. And the cause is continued.



A.B. Leung et al.

vs Decree to 2. ::  
3

Mariah Leung et al.

Entered in Chancery  
Order Book 7  
page 588

14288.

Enter this decree.

How many

Feb 22nd 1905.



A. B. Leary et al.  
against

Plaintiffs

The Chancery.

Whereas Leary et al. Defendants  
The order of continuance in this case is set aside and they have  
this cause come on again to be heard upon  
the papers formerly filed in the case and  
the exceptions of plaintiffs to the separate ans-  
wers of A. B. Leary & Elizabeth Leary  
enclosed thereto, and was argued by counsel.  
On consideration thereof it is adjudged  
ordered and decreed that said exceptions  
be and are hereby overruled,  
And the cause is continued.



Patricia L. Loring

Entered A.B.  
No. 7, Page 571.

Enter this Decree.  
Haw Shun  
Decr 22<sup>nd</sup> 1904.



A. B. Livesay, et als.

Plaintiffs.

vs.

In Chancery

*Mariah Levasy et al.*

Defendants.

This cause came on to be heard upon the bill of the plaintiffs, and exhibits therewith, the process duly executed on the home defendants, the order of publication made, posted and published against the non-resident defendants as prescribed by law, the answer of the infant defendant by <sup>L. J. Hyatt</sup> his Guardian Ad Litem and replication thereto and the cause regularly matured at rules and set for hearing by

plaintiffs, and upon the answer of *Nancy O. Levasy, Sarah Roberts*

*A. R. Surgener & Elizabeth Surgener*

, and replication to each of said answers, and was argued by counsel, and the defendants, *Mariah Levasy*

*& A. R. Surgener*

failing to appear and demur plead or answer, the bill is taken for confessed as to them.

On consideration thereof it is adjudged, ordered and decreed, that A. M. Goins, who is appointed a commissioner for the purpose, do state and settle the account of A. R. Surgener, Administrator of the estate of S. S. Surgener, deceased, charging said administrator with all personal estate that came, or by due diligence should have come, to his hands as such administrator, and giving him credit for all sums legally paid out by him as such administrator, and showing what amount will be in his hands for distribution among the heirs of said estate. Said commissioner will also ascertain what sums, if any, were advanced by S. S. Surgener, deceased, to his heirs, and what amount will be necessary to equalize said heirs, <sup>and</sup> whether or not the widow of said decedent received what was intended by said decedent to be her interest <sup>or</sup> dower in his real estate; and whether or not the small tract of land left by said decedent, undisposed of, should be sold and the proceeds thereof distributed among said heirs for the purpose of equalizing said heirs in said estate, or for distribution in any event. Said commissioner will report on any other

matter deemed pertinent by himself or required by any of the parties in interest. ~~A and the cause is continued.~~ *will return with his report the*



evidence upon which said report is founded, and an motion  
of Nancy E. Leary, who suggests that, the bond executed by  
A. R. Surgenor administrator of B. B. Surgenor deceased, is  
not in a sufficient penalty and that the sureties therein  
are not worth the amount of said bond. It is ordered  
that said A. R. Surgenor be required to appear here on  
the first day of the next term to shew cause if any he  
can why he should not be required to execute a new bond  
in a penalty and with sureties sufficient in law as  
such administrator. And the cause is continued.

A. B. Leary et al

vs Deere & Co.

Marion Leary et al

Entered A. B. L.

No. 7, Page 540.

Enter this Deed.

Executed

Deer Land 1904.



H.T.Baker, a witness of lawful age being duly sworn deposes and says:

Q.1.-- Please state your age, occupation and place of residence?

A.-- I am 38 years old, am farmer, reside on Blackwater, Lee County Virginia.

Q.2.-- Were you acquainted with S.S.Surgener, deceased in his life time and if so how long did you know him?

A.-- I was, knew him all my life. I lived about one-fourth of a mile from him when he died.

Q.3.-- State whether or not you paid Mr. Surgener any money a short time before his death, and if so when was it and how much did you pay him?

A.-- I did pay him \$300.00 about the 22nd or 23rd of April, 1904.

Q.4.-- Did you owe him any other money at that time, and if so how much, and how was it evidenced, and what for?

A.-- I owed him \$200.00 at the time I paid the \$300.00, that is I bought a piece of land from him at \$500.00, and paid \$300.00 on it which left me still owing him \$200.00. I gave him a due bill for \$50.00 and executed a note on twelve months time for \$150.00, for the \$200.00 which I still owed.

Obj.-- The foregoing question and answer is objected to because of the incompetency of the witness, S.S.Surgener being dead and the notes and deed are the best evidence.

M' G. Ely for A.R.Surgener, Admr

Q.5.-- Did you pay the above mentioned note and due bill or either of them to S.S.Surgener?

A.-- I did not.

Q.-- State whether or not S.S.Surgener deceased, at the time you paid him the \$300.00, or at any other time shortly before his death informed you that he had any money other than that which you paid him, and if so tell what he said about it?

A.-- He said that that was not all the money he had. He did not tell me how much more he had. He asked me to keep quiet, or not tell about paying him the money, that if his son A.R.Surgener heard it he would ding-dong him for it, and that he did not want to let him have it, that Abe already owed him a good amount that he had let him have there for the store.



Obj.--Objected to for reasons stated in the objection next above.

M.G.Ely for A.R.Surgener Admr. et al.

Q.6.-- Did you have any knowledge of any notes or debts of any kind due S.S.Surgener deceased, at the time of his death, other than your own?

A.-- I don't know of any other debts except the debt that I spoke of A.R.Surgener owing, above.

Q.7.-- Do you still <sup>own</sup> the \$150.00 note and the \$50.00 due bill or either. State how that is.

A.-- I still owe the \$150.00. I paid the \$50.00 due bill to A. R.Surgener, Administrator of S.S.Surgener. I paid it something like a month after Mr. Surgener's death, and after A.R.Surgener was appointed administrator. When I paid the due bill Mr. A.R.Surgener delivered it to me and I file the same herewith as apart of this deposition marked "A.B."

Q.8.-- Please state whether or not you are acquainted with the handwriting of S.S.Surgener, deceased, and did you ever see him write and sign his name?

A.-- I am acquainted with his handwriting, and have often seen him sign his name.

Q.9.-- Please look at the endorsement on the due bill which you have just filed with your deposition, dated May 20th, 1904, and signed S.S.Surgener, and state whether or not said endorsement and the signature thereto, or any part thereof is in the handwriting of S.S. Surgener, deceased. by

A.-- I thought at the time I said it off that it was not Mr. Surgener's handwriting, and I still do not believe that it is his.

Q.10.-- Please state what personal property life stock &c. S.S.Surgener owned, and was on the premises at the time of his death?

A.-- There was a mare there that I would value at \$100.00. Abe told me that Charlie Horton had offered \$125.00 it. There were some cattle on the place but I don't know whose they were. There were some hogs there but I don't know how many. I remember a fine brood sow. There were some fowls, some chickens, I don't know that there were any turkeys or geese. There was a turnig plow there and some harness for a team, and a harrow, and a mowing machine, there were also some double-shovel plows, and some hoes



As to the household and kitchen furniture, there were four or more beds, I know there was four, and seemed to be well furnished with bedclothing. I have observed also a cupboard, sewing machine bureau, cooking stove and utensils for it.

(Defendants reserve the right to cross-examine)

.....*W. T. Baker*.....

S.R.Surgner, a witness of lawful age, being first duly sworn, deposes and says:

Q. 1. State your age, residence and occupation.

A. 1. Age 38; Hancock county, Tenn; and occupation farming.

Q. 2. What relation are you to S.S.Surgner, dec'd, and are you one of the defendants in this suit?

A. 2. I am his son, and I am one of the defendants in this suit.

Q. 3. Please state if you know what debts were due S.S.Surgner at the time of his death and the amount thereof.

A. 3. I know what he told me about it-- He told me that Henry Baker <sup>him</sup> owed ~~me~~ \$200 for land he had sold him. He told me that brother A.R. Surgner owed him \$125 note for land. He also told me he had a county claim of \$25 in his trunk--for a beef cow he sold to the Poor House. This is all the notes, except the ~~main~~ O.P. Levisay note. He said O.P. Levisay owed a note of \$200 or \$250 at the bank--that he got \$50 of the money, and that he wanted me to pay \$50 to Levisay or the wholder of the note. I am not certain as to the amount of the note. O.P. Levisay was present and heard the conversation. Levisay did not say anything. My father said to Levisay, I don't want you to be saying you never got anything. This conversation was two or three days before father died.

Q.4. State anything you may know in regard to any money that your father had at the time of his death, or a short time before

A. He said some two or three days before he died that he had \$300.

Q. Where did your father keep his money and notes and other papers?

A. In his trunk, he said.

Q. Who was present when your father spoke of the money he had on hand?

A. Mariah Levisay, my sister.

Q. What personal property did your father own at the time of his death and give its value as near as you can?

A. He had a mare, worth \$100; a heiffer worth \$20; a sow worth \$15; some four or five shoats worth \$2.50 a piece. I think his farming implements had been mostly worn out. There was an old plow, worth \$2.



There used to be an old mowing machine there, I don't know what became of it. I don't know in regard to the chickens. There was a bottom field in corn, supposed to be seven or eight acres, and ought to have made 300 bushels of corn; they had just mowed a field adjoining the foregoing, of seven or eight acres of grass, A. R. Surgner mowed and put up the hay, and I suppose he was entitled to about half for putting it up. He was also entitled to half of the corn, according to the rules of my father on the bottom land, and also according to the rules in that community.

Q. What was the estate's part of that corn reasonably worth per bushel? or what is it now worth?

A. What the administrator sold at the sale, I think averaged from 50¢ to 70¢ per bushel. He did not sell half of it. I think he claimed only a third was sold. He sold from 80¢ to 90 bu.

Q. State what household and kitchen furniture was left by your father and its value.

A. He had a sewing machine which ought to have been worth \$12.50; a bureau, worth \$12.50; a cupboard, worth \$5; a right smart good books, worth, I can't say what; he had a couple of beds of his own, or one bed and a lounge, with the necessary bedding, cover &c., worth, I would say the lounge \$4.00, and the big bed, with what belonged to it, \$15.00; he had a good reaser worth \$1.00; he had a clock worth about \$2.00; he had a watch two or three years before his death, but A.R. Surgner got hold of it and swapped it off. I suppose the watch was worth \$10.00; there was a was stand worth \$1.00; a was kettle ~~worth~~ with a hole in the bottom of it worth \$1.00; a farm bell worth \$2.00.

Q. State if you know who had the key to your father's trunk at the time of his death, or a short time before, and tell any thing you may know in regard to the matter?

A. I asked my father a day or two before he died in regard to his key, but who he <sup>had</sup> said his keys I won't be certain, but ~~ixixinkxxhaxsaid~~ my best impression is he said mother had them. The reason I spoke to him about the keys was that I said to him that I was afraid that his money and notes would be made way with. He said no they wouldn't. He had spoke to me that he wanted me to take charge of his papers &c. and act as his administrator. He said I would <sup>find</sup> his will there in the ~~in~~ trunk, and \$125 note on Abe, and a \$25 county claim. He said he had \$200 in money. I can't state that he said that was in the trunk



exactly. In speaking of the note against Abe he said of course I don't suppose he means anything else but to pay it. He mentioned about the Baker notes, but the best of my recollection is he said they were in his trunk, I know he was talking to me about the notes. I remember he said I would find his papers in his trunk. He talked to me twice about the matter, or more: my sister Mariah Levisay was present at one time. O.P. Levisay was present at one time, but at that time he did not say very much about his business. At another time there was not any body present.

Q. Since Mr. Surgner died, do you know whether A.R. Surgner has paid to any of the heirs any sums of money; if so, state to whom he paid it and the amounts you know of?

A. ~~Mathew~~ Since his death I called on mother for \$50, and she told Abe to pay it over to me, and he handed it to me.

Q. That was out of money that Mr. Surgner had on hands at the time of his death, was it not?

A. The reason why I called on them for the money was that I had understood that father had said for <sup>her</sup> ~~them~~ to pay me over \$50 of that money, and I called on her for it, and she told Abe to get it and pay it over, and he did it. He took no receipt. He got the money out of his pocket.

Q. Who else were present besides you, Abe and your mother?

A. If I mistake not, Abe's wife was present.

Q. Was Sarah Roberts there at that time?

A. No sir.

Q. Do you know anything about Abe paying Sarah Roberts \$50, more or less, out of the Surgner estate?

A. I don't know anything any more than what I heard Abe and mother say. They told me that father said to pay ~~her~~ \$50 to her. I can't state whether they said they would or would not pay it.

Q. Have you ever hear them or either of them together talk about dividing up the money he had on hands at the time of his death?

A. I have had a right smart talk with them on the money matters. After I was sworn in as Admr on the Tenn. side I asked them to give up the remainder of the money and the notes. Abe claimed that it was mother's money and notes and she was not going to give them up. She claimed it also. They did not give them up.

Q. Did not Abe claim that he was to have \$50 of the money too, as well as you and Mrs. Roberts?



A. No sir, I had never heard it spoken of before. He also showed me the \$125 note, and he claimed that he had paid it off, and I asked him where he got this note, if father gave it to him. He would not give me any reply to it.

Q. I see on the appraise bill a pair of saddle bags, do you know what became of the saddle bags?

A. I got them.

Q. Were the saddle bags worth \$5 the price they were appraised at by the appraisers?

A. I think they are.

Q. State whether or not at the time you had the conversation with your father spoken of above in reference to the key to his trunk you at that time or afterwards called on your mother or A.R. Surgner or A.R. Surgner's wife for said key, and if so what occurred, and when was it?

A. ~~I called for permission in the trunk after~~ I called for permission in the trunk after father died. It did not seem that he wanted to give up any thing in the trunk. We went into the trunk and looked up a few papers. The will was in there and the county claim of \$12.50. In speaking of he I mean A.R. Surgner. I asked Abe about the balance of the county claim; he said he did not know any thing about it.

Q. Who had the key to the trunk at that time and who opened the trunk?

A. The best I could get at it the keys were turned over to Abe's wife- I mean they were in her possession.

Q. State what advancements were made by your father in his lifetime to his children, so far as you know, and I will ask you, in doing so to commence with the oldest child and go through with them all, telling anything you may know in reference to any of them being so advanced?

A. Marry Ann was the oldest. ~~I know~~ From my own knowledge and from what I have heard my father say, when any of the children married he would give them a horse or its equivalent, a cow and a hog perhapse, and some articles to start them into house keeping, and treated them all alike, or as near alike as he could. Over and above this I do not know that he gave Mary Ann any thing.

As to Mariah, his next daughter, I have heard him talk aright smart. He always claimed that he had given her what he considered her part.

Mariah Levisay admits that her father gave to her in his lifetime all of his estate that he



time all of his estate that he intended for her, and the same is fully shown by a deed of conveyance of land made to her by her father which is fully shown by copy of said deed filed with the plaintiffs' bill marked "E". She is satisfied with the same and does not wish or claim to participate in any part of the estate left by the decedent at the time of his death.

C.T.Duncan, atty. for Mariah.

As to Sarah Roberts, his next daughter, I know of his giving her security for two or three horses and giving them to her, and paying security money for her and her husband for provisions, and he bought a tract of land for her which cost him \$50, and gave it to her and she lived on it for several years. I know of his giving her cows. I do not know how the notes were executed that he was security, whether by her or her husband, but they were signed by him as security on her account. I have heard him say that he had given her her part-- I have heard him say this at different times.

As to Nancy Levisay, his next daughter, who married O.P.Levisay, I heard him say he had given her a piece of land. He also said he had given her up some notes of about \$350 on some land he had sold her or her husband. I think he valued the land spoken of at about \$500.

As to S.R.Surgner, myself, I do not know that I can tell very accurately what he has given me. He has helped me some away long back years ago, but he said to me that he had not helped me as much as he had the rest of the children living. He probably has given me in years back from \$200 to \$300. I paid him \$25 of this money back by selling him some corn. This is the A.J.Baker matter.

As to A.R.Surgner, my brother, I know of a span of mules and a wagon he received, worth, as my father said, including some money, \$300. Abe and Sam, another brother, bought a stock of goods from Daniel Johnson; in a year or such a matter they were about to fail, and O.P.Levisay and myself had bought them out, and the creditors of Abe and Sam closed us out. At the time Abe and Sam bought out Johnson my father paid Johnson \$400 for them in land. When O.P.Levisay and myself bought them out we were to pay my father the \$400 for them, but as we were closed out and deprived of the goods we never paid it and my father never collected it off of Abe and Sam, at least he so claimed to me. Father also claimed that he loaned Abe and Sam other money which they put in the store, but I do not know how much. I heard father say he paid out \$125 for Abe at Sneedsville on an



indictment he got into. He claimed he paid \$150 on a note her at the bank that Abe had signed his, my father's, name to. There is two pieces of land there that is deed to Abe, or rather one piece to Abe and the other to his wife. He deeded to Callie Surgner and the lawful heirs of A.R. Surgner a tract of land containing 50 acres more or less for the considerations mentioned in the deed. This land ~~is~~ <sup>was</sup> worth at the time of the conveyance, taking the support of my mother into consideration as provided by the deed, I think about \$1000. In fact I at one time agreed with Abe to give \$900 for the land and take my mother and support her. My father was present at the time ~~as~~ <sup>and</sup> spoke up and said that was more than he ought to have had and if it had not been for Bettie, meaning my mother, I would not have given him that much. ~~Father always maintained that~~ I understood from what my father said that he had given Abe something as an advancement in the price of this land, but he did not say how much. He also stated that Abe yet owed him something on the land. I do not know whether Abe paid the \$300, mentioned in the deed, or not. As to the land conveyed by the deed dated May 26th, 1904, in which the consideration is stated to be \$350, ~~that is the same as the consideration in the deed~~ <sup>that is the same as the consideration in the deed</sup> I talked to father and Abe both about that as soon as I heard of the deed. I considered the land well worth \$600, and told them both I would give that. There is from 8 to 10 acres in the body, of fine bottom land, with the exception of a small piece of about 1/2 <sup>acre</sup> of fine blue grass land. I told father he ought not to have given him any more, that he had given him enough, I do not know that father gave me any answer.

As to David Surgner, son of Samuel M. Surgner, I do not know and have not heard of his having anything.

As to A.B. Levisay and Almira Fletcher, the plaintiffs, I do not know of their having received anything.

As to Samuel M. Surgner, in addition of what I have stated above as to the \$400 that he and Abe got, he got a sowing machine of Henry Baker that father paid for of \$30. I have heard father say after Sam went west, that he paid off an attachment that was on Sam's property of about \$40. I have also heard father say that Sam fell behind on a log matter with A.R. Anderson, but do not know how much, and that he, father, paid it off. This is all I now recollect of as to Sam.

Q. What do you consider the tract of land conveyed by your father to Mariah Levisay reasonably worth at the time of the conveyance?



A. I have heard my father say it was worth \$100 per acre, and I suppose it was worth that amount.

EXAMINATION BY R.L.PENNINGTON, ATTY.FOR NANCY LEVISAY:

Q. In reference to the A.J.Baker money which you father procured for you, I will ask you to state if that transaction was not this way: You borrowed the money, \$500 from Mr.Baker, he went you surety for the money, and afterwards had to pay off for you \$200 or \$300 of the notes. Mr S.S.Surgner, you father, took the note which he paid off for you and let S.M.Surgner have that note and assigned it to him. Is that the way of it? And that note was never paid by you?

A. I did not borrow \$500 from Andy Baker, neither did my father borrow it for me. ~~Waxharraned~~

Q. I understand from your statements above that you got some money from Mr.Baker on a note which you and your father had signed, that there was two or three hundred dollard of this note that your father had to pay, which you never paid back to him, except \$25 worth of corn which you let him have. Is this right.

A. I don't admit that I signed the notes, but I got the money as above stated from my father. I can't say he got the money from Baker.

Q. You state that you heard your father say that he had given Nancy Levisay a piece of land, what piece of land was it he said he had given her?

A. A piece of botom land there where they lived, and a piece on the hill side next to the fish trap.

Q. When did you hear him say this?

A. I have heard him say it time and again---several times.

Q. Was Nancy present?

A. I cannot say that she was.

Q. Do you remember who was present when he was telling you this?

A. I don't know that I can say who was present.

Q. You say also that you heard him say that he had given up some notes for some ~~maize~~ land sold to her husband, what was the amount and when was it he told you this?

A. The amount was about \$350, and I have heard him remark it several times.

Q. Did you not also hear that Mr.Levisay had given up a part of the land?

A. Yes, I have heard father say he had let him have back some of the



land; that is that Oliver had let him, father, have back some of the land.

Q. After your father died, at M.B. Levisay's house, in a conversation with him did he not say to you, words to this effect, that you had received \$500 from your father out of money that he had paid in on some land that you had bought, and did not you say in reply to him that it was not quite that much, that the amount was only \$475?

A. I might have made some statement in that way, but when I come to studying over the matter I could not make it out that much, and I told father that I never got. ~~it was~~

Q. A few day ago near this office, in a conversation with A.B. Levisay, did you not tell him that you had gotten \$450 in that land matter, and as an advancement from your father?

A. I might have said so.

Q. Was not this the last time we met here at this office to take depositions in this case that this conversation took place?

A. I might have been.

CROSS-EXAMINATION BY M.G. ELY ATTY. FOR A.R. SURGNER

Q. Did not your father before his death make or attempt to make a will?

This question or any answer thereto, and all others that attempt to set up a will by the decedent, is excepted to as incompetent, irrelevant and inadmissible. No will of the said decedent having been probated in this county, ~~but~~ in which county was the domicile of the decedent at the time of his death.

J.W. Orr, Atty. for Plffs.

A. He did.

Q. Have you that writing, or a copy of it, in your possession, and if you say that you have, will you please file the same and make it a part of your deposition, marked "Will".

Excepted to for the reasons above stated.

J.W. Orr, Atty. &c.

A. I have not got the original, it being on file at Sneddsville, Tenn. I had a copy of it, <sup>but I gave it</sup> to A.B. Levisay, one of the plaintiffs in this suit. I may and I may not.

~~Q. State whether you had said writing proved and admitted to record in the courts of Tenn. as the last will of your father.~~

Excepted to as irrelevant, immaterial and inadmissible for the



reasons above stated, because any such paper was probated in the state of Tenn, a properly authenticated transcript of the record is the best evidence, and for the further reason that if any such paper was probated as a will in the state of Tenn. it was improperly and illegally done, as S.S. Surgner, dec'd, at the time of his death, and for years prior thereto, was domiciled in the county of Lee and state of Va., and the will, if any existed, should have been probated in this county in the first county.

J.W.Orr, Atty for Pliffs.

A. I did.

BY L.T.HYATT, GUARDIAN FOR DAVID SURGNER.

Q. Did you ever hear your father say that he intended to charge a half of the \$400, and the price of the sewing machine and the \$40 paid on the attachment at Rogersville and the amount paid by him on the Anderson log matter as an advancement to David Surgner?

A. I don't know that I ever heard him say what he intended to do about it.

Re-examined by J.W.Orr, Atty. for Pliffs.

Q. Where did your father live at the time of his death, and how long had he resided at that place?

A. He lived on Blackwater, Lee county, Virginia, and had resided there 40 years, or probably longer.

Q. How old is your mother, Elizabeth Surgner?

A. I think she is about 70 years old.

Q. Did your father at the time of his death, have any estate real or personal in the state of Tenn., and if so how much, and of what did it consist?

A. He did; ~~maxxxxx~~ about one-third of the seven or eight acres of land ~~that~~ lay in the state of Tenn., which he owned at the time of his death. ~~Maxixaraxwaxxaxxaxxaxxax~~ He owned no personal estate that I know of in the state of Tenn.

Re-Examined by M.G.Ely, Atty. for A.R.Surgner et al

Q. On yesterday you stated that you had the writing or attempted will of your father probated in the Courts of Hancock County, Tennessee. Please state whether or not you qualified in that Court as executor of said will, or administrator of your father's estate?

Obj.-- Excepted to because irrelevant, immaterial and inadmissible. And further upon the grounds set forth in the exception to



the question in reference to the probating of said will in the state of Tenn. on yesterday. And further if there was any such qualification as an executor in the state of Tenn. the record of the same is the best evidence.

J.W.Orr, Atty. for Plff.

A. I did qualify as executor of the will.

Q. Have you or did you have a properly certified copy of your order of appointment, if so will you please file it with your deposition?

Excepted to because the written evidence is the best evidence, and any oral statement thereto is inadmissible.

J.W.Orr, Atty. &c.

A. I did. I have not gotten it now; I let A.B.Lewis have it and he has never returned it.

Q. State if you know whether or not your father kept an account of any advancements made to his children?

A. I don't think ~~that~~ he did, in writing; that is I don't know of his keeping such.

Q. Did not Abe and your mother tell you after your father's death that your father before his death had given his money and the Baker notes to your mother?

Excepted to as inadmissible, if such statement had been made it would have been self serving upon their part and is inadmissible.

J.W.Orr, Atty. &c.

first

A. They claimed that father said that he wanted mother to have \$50; I can't say that they said she was to have \$50 of the Baker note or \$50 in money. They afterwards claimed that ~~thaxma~~ it was all hers.

Q. On yesterday you stated that your father paid to Danel Jognson in a piece of land about \$500 on a stock of goods bought by Abe and Sam, don't you know it to be a fact, or havn't you heard you father say that he paid himself largely out of this stock of goods for what he had paid on them for Sam and Abe?

A. Well he got some goods; I have heard him remark he got some goods. I do not know how many. After he got the goods he claimed that he <sup>and let them have</sup> paid out other money equal to the goods he got. The goods he got belonged to Abe and Sam both. The other money he claimed to have let them have was outside of the Johnson money, and then after they ~~ca~~ closed out their busined he said he paid out some money for Abe, and this other money that he let them have and the money he paid out for



for Abe about covered the amount of the goods he got. After they closed out, or when we, Olliver and myself, bought them out, father asked me and Olliver to give him our notes for the \$400, but we did not do so, because the goods had been sold from us by their creditors.

And further this deponent saith not.

.....*Surgner*

M.D. Levisay, another witness of lawful age, being first duly sworn deposes and says:

Q. State you age, residence and occupation.

A. I am 60 years old; live in Hancock county, Tenn.; and am a farmer.

Q. Are you the husband of Mariah Levisay, who was the daughter of S.S. Surgner, dec'd?

A. I am.

Q. Were you on intimate terms of friendship with S.S. Surgner?

A. I was.

Q. Were you ever connected with him in business, if so what?

A. We were in the mercantile business about seven years.

Q. Did he not talk to you freely about his business matters and family matters?

A. He did.

Q. State if you know what notes or debts were due to Mr. Surgner at the time of his death, and the amount.

A. I can't state more than family talk. I don't know that I ever heard him state about his notes. I think I have heard him speak of the Baker notes; that he had sold Baker \$500 worth of land.

Q. Do you know how much money, if any, he had on hand at the time of his death, or shortly before; if so state?

A. I do not of my own knowledge.

Q. State what personal property, such as live stock &c. he had at the time of his death.

A. I can't state just whose property it was. He had a mare that he claimed; a sow and probably some shoats; I think he claimed a heiffer. I think the mare, sow and shoats were worth about what S.R. Surgner states in his deposition; I can't state as to the heiffer, as I did not pay much attention to her. As to the household furniture and kitchen furniture and farming implements, I did not know much, but there were some three or four beds in the house.



Q. State what advancements were made by S.S.Surgner to his children during his lifetime so far as you know.

A. As to Mary Ann I know of no advancements.

As to Mariah, my wife, I know of no advancements, except in the deed made to her by her father as her part of his estate.

As to Sarah Roberts I can state only what Mr.Surgner stated to me. He stated that she had received her part, \$500, in the way of supplies, meat, corn, horses, cows &c. This was some ten or twelve years ago. He also spoke of letting her have a piece of land, and I know that she lived on the land as her own and sold it.

As to Nancy E.Levisay, he ~~said~~ claimed that they owed on land as much as her part; that there would be nothing going to her, at that time. Since that time Olliver has probably made some payments, but I don't know how this is, but there was about \$200 worth of the land <sup>part</sup> that is in the first deed that Mr.Surgner took back in payment of what Olliver and his wife owed him. He claimed at that time that Olliver and his wife owed about \$850 on the land--this was before he took back the \$200 worth of land. This is my best recollection, but I am not positive. There was another small land transaction between Mr.Surgner and Olliver, but I do not know how that was.

As to S.R.Surgner. At one time Mr.S.S.Surgner came to my house going to S.R. Surgner's. He claimed that he had gone on a note with S.R. for ~~about~~ \$500, and he was going there for the purpose of getting him to give him his note. When he came back he was a little disgusted at S.R.. He claimed that he refused to give the note in full of the amount, but stated that it would do him no good, that he intended to charge it to him out of his part of the estate. He claimed that he had paid this Baker debt off out of his own money and that S.R.had paid no part of it. Since that time, in fact <sup>c</sup> since the death of S.S. Surgner, S.R.Surgner, in conversation with me, claimed that his father was a little mistaken in the amount, that he had only gotten about \$475.

As to A.R.Surgner, I have heard Mr.Surgner claim that there was an advancement in the first deed to Callie Surgner and A.R.Surgner's heirs, but I do not know how much, as I never heard him say. I never heard Mr. Surgner say anything about an advancement in the second deed, as that was made only a short time before his death, but I would think there was. The land is worth from five to six hundred dollars at a low estimate, the consideration in the deed is only \$350.



In the first deed to Callie and A.R.Surgner's heirs, taking into consideration the support and maintenance of the widow, is worth from \$800 to \$900. without this incumbrance I would say the land is worth <sup>\$1800.00</sup> \$18,000.00.

There was an advancement in the sale of the land to Johnson, (to Able and Sam), as spoken of by the witness S.R.Surgner, of \$400; \$200 of this was to Abe. At one time while talking to Mr.Surgner about this matter, and about the fact that Abe & Sam were about to fale in their goods business, he stated to me that he had advanced them other money, and that he had paid out ~~XXXXXXXXXX~~ a small debt for them both, and that he did not think that he ought to lose it all, and that while others were pressing for their money he thought he had as good a right to his as they had to theirs and he asked me to go with him to get some of their goods, and we took a wagon and went and got a wagon load, consicting as I <sup>remember</sup> of sugard, coffee, dry goods &c., and brought them to Mr.Surgner's house for him, and I have heard him say he afterwards sold some of the goods to Mr.Watson who was engaged in the mercantile business at Blackwater, Lee county, Va. I suppose the load of goods was worth from \$150 to \$200. At another time I hauled another barrel of ~~sa~~ sugar from the store to Mr.Surgner's. During the foregoing hauling I had a good team and hauled a good load, and S.S.Surgner went with me and walked before and carried a lite, as it was after night.

I afterwards had a conversation with A.R.Surgner, a year or so after this transaction, and he claimed that his father was not hurt in the transaction with him.

So much of the foregoing answer as states what A,R.Surgner claimed, is excepter to as inadmissabe, because selfserving.

J.W.Orr, Atty. for Pliffs &

L.T.Hyatt, Guardian ad ~~litem~~ <sup>and</sup>

S.S.Surgner also claimed that he had paid some money for Abe here at Jonesville and at Sneedsville; as to the amount I do not know, ~~XXXXXXXXXXXXXXXXXXXX~~ but my best judgment is \$150 would cover the amount, and my best judgment is this appliest to Abe and Sam, both. I rather think the debt at Jonesville was a debt to the bank. My understanding is that Mr.Surgner advanced a span of mules and a wagon to Abe. I once owned the mules myself; they were reasonably <sup>worth</sup> \$200. I suppose the wagon was worth \$35 or \$40.

As to Samuel M. Surgner, I know of no advancement, except as above stated.



As to David Surgner, son of Sam, I know of no advancements to him that he has received, but there is a provision in the deed to Abe.

As to A.B. ~~Surgner~~ <sup>Livison</sup> and Almira Fletcher, I know of no advancements to them.

Q. State ~~any~~ what crops were on Mr. Surgner's land at the time of his death and what became of the ~~same~~.

A. There was bout 22 acres of land in the possession of Mr. Surgner at the time of his death, seven of which was in grass, seven in corn, about eight acres in grass and corn. I think the seven acres ought to have made 245 or 250 bushels of corn at a low estimate; the meadow was mostly pasture land; there ~~saw~~ <sup>was</sup> some three or four acres of corn in it which I think ought to have made 75 or 100 bushels of corn; the grass in the meadow was not worth much, it was weedy. The rules of renting in that neighborhood is one-half, and Abe had the land in cultivation, and the corn was worth 50 cts per bushels.

X- Examination by L.T. Hyatt, Guardian

Q. I will ask you to state if you did not understand from the parties that Sam Surgner had sold out his interest ~~in~~ in the goods business to Abe before the time spoken of by you when you hauled a lode of goods away for Mr. Surgner?

A. It was my understanding that Sam had sold out to Abe, but as <sup>to</sup> just when I cannot state, but I beleive it was before I hauled the goods.

Q. Did you ever hear S.S. Surgner say at any time that it was his intention to charge S.M. Surgner or his son David with one half of the \$400 matter as an advancement.

A. Never did that I remember.

Q. when Mr. Surgner spoke to you about haulin some of the goods away for the purpose of protecting himself, did he not at that time treat the \$400 as a loan?

A. I don't know that he ever mentioned such a thing.

Q. Still he was attempting to have it repaid by taking the goods, is that right?

A. Yes.

M.G. Ely, Atty. for A.R. Surgner et al.

Q. Did Mr. Surgner keep any account of the gifts or advancements which he made to his children?

A. I think not, in writing.

Q. In your talks with him about his transactions with his children did he spear of what he had done for them as gifts or advancements?



A. He never used the words gifts or advancements, but spoke of having done so and so; but from his talk I construed it that he meant advancements. In fact on one occasion when he wanted me to take charge his farm and pay off the other heirs \$500 around to all the children, except Sarah and Nancy, he said they had received their part. This was some ten or twelve years ago.

Q. State whether or not Mr. Surgner would talk one way to one of his children and another way to others of his children?

A. If my information is correct, it seems that he has been a little flattering to some of his children, to some extent.

R.L.Pennington, Atty for Nancy E. Levisay.

Q. In speaking of the advancements, you said that Mr. Surgner told you that there was \$350 due on the land which he had let Olliver Levisay have. I will ask you to state when and where that conversation occurred.

A. I think it was at my house, in the last year or so.

Q. You say that was before Olliver let him have back the \$200 worth of land.

A. I think it was.

Q. When Olliver married Nancy there was considerable opposition to it in the family, was there not, especially by Mr. and Mrs. Surgner?

A. As to the objections, I don't know that Mr. Surgner ever objected, Mrs. Surgner did.

Q. When Nancy married, did not her mother refuse to give her anything for household goods, and refuse to allow her to take her own bed?

A. As to the bed I do not know; <sup>and</sup> but as to giving her any thing I do not know; but later on they did get on as good terms as any of the family, apparently.

And further this deponent saith not.

*Mr. D. Levisay*

A.B. Levisay a witness of lawful age being first duly sworn deposes and says:

Q. State your age, residence and occupation.

A. I am 35 years old; live in Haccock county Tenn; and am farmer and mechanic.

Q. Are you one of the plaintiff in this suit and a grand son of S.S. Surgner, dec'd.

A. I am.

Q. State anything you may know in regard to any notes or debts due



S.S. Surgner died at the time of his death.

A. He told me of the two notes he held on Henry Baker, one for \$150 and one for \$50, which were executed for land; and I saw the \$50 note a short time after his death in the possession of Abe and heard him read it to A.J. Baker and wanting to sell the note to him. I saw the back of it while he was reading it and as to my best knowledge there was no indorsement on the back. He was trying to sell the note to Mr. Baker, and Mr. Baker asked him if he was the administrator and he answered he was. Baker asked him who went on his bond, he then prolonged his speech and said the New York Bonding Co. Baker then turned and asked me what about the note and I told him he had better let it alone, that I thought it best not to buy it; Baker asked him then what his bond cost him, he said \$3.50; Baker asked him who was the agent, and he said Lawrence Hyatt. I was on my way to Jonesville and came on that day for the purpose of filing the bill in this case, and searched the records and found that he had not given bond-- only found that he had been sworn in but the bond had not been signed. As I went on back home by his home, I called to him and said that I had searched the record and found that he had not bonded. I told him that he had to come with me back to Jonesville on Friday and give bond; so we came back to Jonesville and gave R.G. Levisay and his wife, (he signing his wife's name) as security.

Q. State any thing you may know ~~anythingxxxxxxx~~ in regard to any money that Mr. Surgner had on hand at the time of his death, or shortly before.

A. He told me that he had \$300 in money just a short time before his death; he also said he had ~~had~~ \$100 set apart to pay his doctor bills and burial. He said he had received ~~the~~ \$300 from Henry Baker. At the same time there was some talk between he and I about \$150 for me ~~in~~ with A.J. Baker; he said he would do that, but he remarked that he was not able just then that he was not able to go to Mr. Baker's but thought he would get better. I told him all right that I did not want to worry him. This was a few days before he took his bed. He never made the settlement of the \$150.

Q. State what personal property was left as near as you can by S.S. Surgner.

A. He had a mare he said was his own, and a fine heiffer. The mare was worth \$100, the heiffer was ~~\$20x~~ worth \$20. He had a sow he called







XX

After Grandfather's death, the day of his burial, something was wanted in the trunk, and he key was called for and Grandmother said the key was under the trunk, and they looked and found the key and unlocked the trunk and got what they were calling for out of the trunk. I don't remeber who it was that called for the key, or who unlocked the trunk.

Q. State anything you may know in regard to any advancements made by your Grandfather to any of his cildren during his life time.

A. As to my mother Mary A. Levesay, I do not know of any advancements of my own knowledge, not have I ever heard my Grandfather speak of any, nor has there been any to myself or sister.

As to Mariah Livesay, I know of him advanceing her the piece of land mentioned in her deed.

As to Sarah E. Roberts, I know of him giving her corn, meat and flour and a small piece of land and some money and saying that he had almost raised her family, and that he had given her her part. I have heard him say this at different times. On the day of his burial I heard her say that her best friend was gone and she did not know wabt she would do now, that she never came to him in the time of trouble and need but what he would help her and she said "I have had my part"; I am satisfied if I never get no more".

As to Nancy E. Livesay, I have often heard my Granfather remark and only a short time before his death that he had given Nacy her part in his estate that he had given her a piece of bottom land containing a house and the orchard and other means which he considered her part.

As to S.R. Surgner, he told me that he had given Bud \$500.00 in money, which he had gotten from Andy Baker, and that it went into Bud's land. This conversation was something like three months before Grandfather's death.

As to A.R. Surgner, he told me he had given him more than he ought to and he had cost him more than all his other children and give him more trouble, that he had given him his mother's dower, or that his mother had given him her dower, that he wouldn't have done so if it had not been for her, "granny", annoying him. He told me that Abe and Sam had sunk him \$400.00 or more in the goods business. He told me he had paid \$125.00 at Sneedville for Abe and that he paid some money out at Jonesville for him. He gave Abe



a span of mules and a wagon, just before Abe went to Texas. The mule was worth \$200.00 and the wagon was worth according to my best estimate \$40.00, My Grand<sup>father</sup> said that he had let him have the mules and the wagon and enough money to make it up to three hundred dollars. The conversation above referred to about Abe giving him trouble, was made before the last deed made by my Grandfather to Abe.

As to Samuel M. Surgner, Samuel M. Surgner I remember when his things were attached on at Rogersville and that Grandfather said he paid \$40.00 to ~~xxxxxxx~~ have then released. I remember nothing else except the \$400 above spoken of.

As to David Surgner, son of Samuel M., I know of no advancements to him.

Q. What do you consider the land embraced in the deed to A.R. Surgner, dated April 30, 1900, was reasonably worth at that time, free from encumbrances?

A. I beleive it was worth \$2000.

Q. What do you consider that land was worth at the time, with the provisin contained therein for the support and maintainance of your grandmother, Elizabeth Surgner, during her natural life.

A. I consider it was worth \$1500.

Q. What do you consider the last parcel of land conveyed by your grandfather ~~in~~ and your grandmother to A.R. Surgner, may 28th, 1904, reasonably worth at the time, with the possession retained to your grandfather during his natural life?

A. I think \$800.

Q. Did A.R. Surgner ever tell you anything about how he obtained this last deed; if so, state what he said?

A. Well, I was up there in his store, a very few days after the death <sup>died</sup> of the old man, and Abe told me that he would not have gotten his deed if he had not <sup>made it</sup> ~~gotten~~ himself, that he was sharp enough for the old man, and that he just lit right on his horse and went to Jonesville and had it ~~xxxxxxx~~ registered and recorded. He said he was afraid the old man would get ahold of it and tear it up.

Objected to, because the validity of the deed is not in issue.

M.G. Ely, Atty. for A.R. Surgner et al.

Q. Did your grandfather ever tell you anything in regard to the provision in the deed to Callie Surgner et al. for the support and maintenance of Elizabeth Surgner, if so state what?



X  
A. He did, not long before his death, state to me that Abe was to support her, clothe her, feed her and pay her doctor bills and treat her well during her life, and that he had not done it, that he had had to ~~pay~~ bear her expenses himself. He told me that he had given grand mother all he intended for her and that what was there was his own and he did not intend for her to have any more of his estate.

Q. Has A.R.Surgner been present during the taking of these depositions?

A. He has not, untill to day.

Q. Has he since the institution of this suit proposed to buy you out; and if so, what did he say about it?

A. He did; he said he would not mind to buy me out if he could run the business the way he wanted to, but that he could not quite do that.

Q. Of the seven or eight acres of land left by your grand father, how much of the piece lies in the state of Tenn.

A. I don't think quite an acre.

Q. Did your grand father have any other estate, real or personal, in the state of Tenn.?

A. He did not that I know of.

Q. State whether or not A.R.Surgner at the time the deed was made to his wife and children was involved in debt or not?

A. Grandfather told me he was, and Abe also has told me so. Grandfather told me that he made the deed that way in order to save the land for him, Abe.

Objected to because the validity of the deed is not in issue.

M.G.Ely, Atty. for A.R.Surgner, et al.

Q. Did you have any conversation with S.R.Surgner here near this office a few days ago in reference to the amount he had received from his father by way of advancements; and if so, state what he said about it on that occasion?

A. I did have a conversation; Bud, Olliver <sup>my</sup> and self were standing out near the corner of the office; Olliver said to Bud you will have to pay that \$50 back that was paid to you; Bud said if I have to I can; and while we were talking Olliver spoke to him again and said to Bud, you know you got \$500; Bud answered no, not quite that much, only about \$450. I said to Bud you know it was \$500, that Baker money, that you got from Andy Baker. He said he got \$450 besides the \$50.

Q. State whether or not you ever said anything to your grand mother about the note for \$150 on Henry T. Baker, and if so what was said about it?



H.B.
 A. I came up to Abe's store after the death of grandfather, I don't remember how long after his death, and Abe told me that grand mother had given Sarah \$50 and Bud \$50; I said to him it looks like she ought to give me something and he said you will get your part after while, you need not be in any push about it. I went on down to the house where grandmother was, and after talking to her some little time, I asked her if she had not given Sarah \$50 and Bud \$50; she said she had, then I asked her to give me the Henry Baker \$150 note; she said I have got both of the notes and the remainder or balance of his money and I'd give you the \$150 note if Abe was willing. I said to her it looks like he ought to be willing. I think this is about the substance of the conversation.

X-Examination by M.G.Ely, Atty. for A.R. Surgner etal.

Q. ~~Didnt~~ Did'nt you grand mother Surgner tell you that your grand father had give her the Baker notes and his money before he died?

Excepted to because selfserving and in admissible.

J.W.Orr for Plffs.

A. She did not.

Q. How did she say she came by the notes and the money?

A. She did not say; she just said she had them.

Q. Several times in your deposition you speak of hearing your grand father say that that certain of his children had had their part, what was their part, or what do you mean by their part?

A. From <sup>m</sup>the discourse and conversation of our talk it was thoroughly understood by me that it was what he aimed for them to have of his estate—he did not value it.

Q. Do you know whether or not he kept an account of gifts or advancements with any of his children?

A. I don't know that he kept any written account.

Q. Did you ever hear your grandfather say that it was his intention to charge his children with what he had given them or done for them, as an advancement?

A. I never heard him say he had charged it or given it as an advancement, but I heard him say that what he had given them or a part of them was what he intended them to have. I don't know that I ever heard him use the word advancement in my life—He alway used the words give and done, and would say he intended that as their part of his estate.



Q. Did you ever hear you grandfather say that the wagon and pair of mules furnished Abe was give<sup>in</sup> to him and charged to him as an advancement?

A. I never heard him say that he had it charged to him as an advancement.

Q. You state that you heard you grandfather say that Abe and Sam had sunk him \$400 in the goods business, and that he had paid out considerable money for Abe <sup>at</sup> ~~at~~ Jonesville and Sneedsville, did you ever hear him say that he had charged those amounts as advancements?

A. I never heard him say he had charged ~~ix~~ it as advancements-- I never heard him use the word<sup>s</sup>.

Q. Han't you heard your grandfather say that it was his intention to give his children about \$700 a piece?

A. I never did.

Q. Did you ever hear you grandfather say that he had given Abe any thing in the way of an advancement in the price of the lands which he had deeded him?

A. I never heard him use the word advancement, but he always used language that conveyed to me the idea that he had given him all he intended for him, but he never said what he had given him in the price of the land. He did say that in the price of the first land he had given him more than his part and that he would not have done so if it had not been for "granny".

X-EXAMINATION BY R.L.PENNINGTON, ATTY. FOR LEVISAY ET AL.

Q. You say you have often heard your grandfather say he had give Nancy her part of the estate, when was this?

A. I can't remember just the time, but it was just a while before he took down sick, but I have heard him mention it a good many time in my life.

Q. In what did it consist <sup>in that</sup> ~~did~~ he say <sup>it</sup> ~~that~~ he had given her?

A. A piece of bottom land, and the orchard, taking in the houses, and other means.

Q. Don't you know that the orchard that is on that place was put out there by O.P. Levisay since he got that land from Mr. Surgner?

A. The old orchard is the one that he conveyed to my mind.

Q. Don't you know that O.P. Levisay bought that land ~~from~~ <sup>old</sup> Mr. Surgner about 1882, that the ~~old~~ orchard is on, and paid him all the land was worth at that time?



A. I do not. I know nothing except what O.P. has told me about it.

And further this witness saith not.

..... *A. B. Lindsey* .....

A.R. Surgner, Administrator, introduced by himself, deposes and says:

Q. State what came into your hands as administrator of your father's estate?

This question or any answer thereto is excepted to at this time, until the administrator had made out and filed with the commissioner a proper inventory of all personal estate, including notes and other evidences of debt, and money, and any personal property not embraced in his sale bill, and that was left by his decedent, and that came or should have come into his hands.

J.W. Orr, Atty. for Plffs.

A. ~~xxxxxx~~ There came into my hands what is itemized on the ~~appraise~~ and sale bills which I here file ~~marked~~ marked "A" and "B", and make them a part of my deposition.

The sale bill file marked "A" is excepted to because not legally made out, and does not show what the law requires, and the appraisal bill is also excepted to ~~xxxxxx~~ because it does not show the appraisers were legally appointed. There was no Circuit court for Lee county, Va., on the 5th day of Nov., 1904., and it does not show that the appraiser appraised all the personal property of S.S. Surgner deceased.

J.W. Orr, Atty. for Plffs.

Q. Was there any other property that you know of that should have come into your hands as such administrator belonging to your father at the time of his death?

Ans. No sir, ~~not~~ I reckon not:

Ques. It is alleged that Henry Baker was indebted to your father at the time of his death by note in the sum of \$200, and that your father had some money on hand at the time of his death, please state why those matters were not appraised and taken in charge by you as administrator?

Ans. It was on account of my mother, she said that they belonged to her and that he had given them to her before he died.

Ques. It is alleged that your father owned a horse, a heifer and a sow and some shoats and some house hold furniture that you should have taken charge of as administrator, explain why that was not done?



Ans. There was a cow, a horse ~~there~~ and a sow and three of four shotas, and I did not take charge of these because I thought mother was entitled to them as widow: Mother claimed the <sup>bureau</sup> ~~beakrow~~ and sewing machine and the a praisers said that she claimed them and were entitled to them; father owned one bed at the time of his death and my mother kept that'

ques: It is alleged that you should be charged with a note of \$125.00 which was executed by your wife to your father as part of the purchase price of the first tract of land that was deeded to you, please state why that note was not appraised?

Ans. It was paid off to father before his death; that is it was paid to other parties by father's orders.

Objection:

The foregoing question and answer thereto is excepted to on account of the incompetency of the witness, S.S. Surgener is dead, and witness is incompetent.

J.W.Orr. Atty for plaintiffs.

ques. There has been something said in some of the evidence taken that there was some hay on some of the land that you should account for as administrator, state and explain how this is?

Ans. I got the seed and sowed it on the land and the contract was with father that I was to have the hay.

Objected to for incompetency of the witness.

J.W.Orr, Atty.

ques. Was there any pasture land that ~~that~~ was worth any thing that you should account for:

Ans. There was some stalk land there, but it was in a condition that I could not sell the pasture.

ques. How many bushels of corn was raised on that piece of land of your father's.

Ans. There was close three hundred, or 275 I guess-

ques. What part of that corn belonged to your father's estate?  
when he charged me any thing

Ans. He always charged me one third. ~~It~~ I furnished every thing and cultivated the land.

Exception: The statements of the witness as to any contract between him and his father in reference to the cultivation of the land is excepted to as incompetent, S.S. Surgener being dead.  
J.W.Orr atty.



Ques. Please state whether or not your father in his life time furnished you any property, money or land and charged it to you as an advancement as one of his heirs?

Ans. If he did I never knew it.

Ques. Do you remember of him giving you a wagon and paid of mules if so where they an advancement to you?

Ans. I remember of getting the mules and wagon but if he intened to charge it to me as an advancement he never said any thing about it.

Qes. It has been stated here that your father furnished you and your brother Sam \$400, in the price of a piece of land sold to Danl.

Johnson in a stock of goods, and that he furnished you and Sam other money in connection with said stock of goods, please state whether or not that was made to you as an advancement?

Ans. He did, but he got it back out of the stock of goods and what he recovered off of Cowan, McClung and Co., \$250 was what he got of Cowan, McClung and Co., and the goods he hauled away would have amounted to three or four hundred dollars. And his store account of over \$100, he never paid except ~~back~~ some he gave me as I needed it.

Objection. So much of the foregoing answer as speaks of the recovery against Cowan, McClung and Co is excepted to as inadmissable because if such recovery was had there is better evidence. The statement as to the store account is also inadmissable beacuse there is better evidence.

J.W.Orr. Atty.

Ques. Please state whther or not your father ever <sup>paid</sup> any sums of money for you either at ~~xxxxxxxxxxxx~~ Sneedville or Jonesville, and if so what for, the amount and was it furnished to you as an advancement?

Ans: He paid for me ~~on a fine~~ at Sneedville on a fine \$144' and some on some fines at Jonesville. I do not know the amount; if he ever paid any thing for me at the bank I have no recollection of it. They were not gifts nor advancements and went out of our other dealings.

Ques. Please state whether or not your father give or adadvanced to you any sum of money in the price of lands which he deeded to you and your wife?

Ans. As to the first piece I think it is costing me pretty well what it is worth, for I do not know what it will cost; as to the



second piece it is worth a little more than \$350, my father always considered both pieces some more than what he sold them to me. *at*  
I never heard him say how much more.

~~Ques.~~

By Judge C.T. Duncan.

Ques: Were you present or do you know any thing personally of the alleged gift by your father to your mother of the money he had on hands at the time of his death.

Ans. I do not, all the information I have is what she claimed to me after my father died.

Ques. Have you collected any money belonging to your father's estate since his death if so state the amount and from whom collected  
*Ans* From H.T. Baker \$50, the amount of a due bill executed by him to my father as a part of the purchase price of a tract of land sold by my father to said Baker. I collected this after my mother had set up claim to it and filed an affidavit, and proved by my wife that it was hers that he had given it to her.

Ques. Did she also set up claim to the \$150 note due by Baker to your father?

Ans. No she has not yet.

Ques. When did you first hear of her claim to the \$50 note?

A. Some time after the death of my father.

Q. How long has your father been dead?

A. Since the 4th day of July, 1904.

Q. State as nearly as you can the time when your father sold the piece of land to H.T. Baker, the same land for which the \$150 and \$50 were executed.

A. I notice that the due bill is dated April 23, 1904, and my recollection is that the sale was made the same time it was given.

Q. Upon what consideration does your mother claim that your father gave her the Baker due bill and the money he the had on hand?

A. I do not know any thing about it, except she claims that he gave it to her.

Q. How much money did your father have on hand at the time of his death, if you know?

A. About \$300.

Q. He also had did he not a county warrant of \$25?

A. It was 12.50.

Q. What became of that warrant?



A. I paid it on his tax before I qualified as administrator.

Q. Did it take all the claim to pay the taxes?

A. I think there was four dollars and something over.

Q. Will you file the tax tickets paid by you out of said claim?

A. I will, and I here file one of said tickets and will file the other, as vouchers with my settlement.

The statements of the witness as to what Mrs. Surgner claimed to her are inadmissible.

J.W.Orr, Atty. for Plffs.

Q. ~~xxxxxx~~ Have your wife and yourself been complying, and are you still complying with the terms and condition of the deed of you father and mother to your wife, which required you and her to furnish to your mother a comfortable support and maintenance during her lifetime?

A. We are trying to the best we can.

Q. Is the support and maintenance that you are furnishing to her ample and suited to her condition in life and satisfactory to her?

A. We are, and she seems to be entirely satisfied.

Re-Examination by M.G.Ely, Atty. for A.R.Surgner et al.

Q. Please explain what you have learned about the \$100 Owens and Redman note on the appraise bill since it was appraised.

A. I have learned that it has been paid, and that my father gave Mr. Owens a receipt during his life time, and I here file same with my deposition, marked "Owens".

Q. Please state what you know about your father giving anything to Sarah Roberts during his lifetime.

A. It was given to her in such a way that I cannot state it: He gave her a piece of land that <sup>he paid</sup> ~~xxxxfatherxxxx~~ \$40 for; she lived on it for a time and then moved off and left it and her boy then sold it. I know of him letting her have a horse. I can't state whether she paid anything for the horse or whether it was given to her. She got a cow or so, I can't state how many. I have heard my father say he had paid some security debts for Geo. <sup>Davis</sup> ~~Roberts~~, her husband, but I do not know how much.

Q. Do you know whether your father intended for her to have any part of the estate which he left at the time of his death, or did he consider that she had had her part?

A. He told me one day that she had to have some more, but he did not say how much.



Q.-- Have you received from your father any more than he intended for you to have?

A.-- No sir, I reckon not.

Cross examination by Counsel for plaintiff.

Q.-- Do you know anything of your father at one time and about the time that he proposed to turn over the place to M.D.Livesay, intending to make his children equal on the sum of \$500.00 to each?

A.-- I recollect some such words as that being handled along about that time. I don't remember that I heard him say so, but some one there was talking such as that.

Q.-- Do you remember to have heard him say after that at any time, that he thought he could let them have as much as \$700.00 each?

A.-- I don't recollect hearing him say that. It may have been talked but I don't remember it.

Q.-- Referring to the note executed by your wife to your father for \$125.00, to whom was that note paid?

A.-- The first credit of of \$56.25 was paid to James Dingus, June 10th, 1901, I paid that myself, and know that it was paid; the next credit of \$27.50, Oct. 6th, 1901, was paid to Jim Dingus by myself; the next credit, Sept. 27th, 1901, of \$27.13 was paid to James Dingus by G.W.Pridemore. After these credits were paid, there was a balance on the note, and my father handed me the note and said he would give the balance to me.

Q.-- In whose handwriting are the credits endorsed on said note?

A.-- In my handwriting by the consent of my father.

Q.-- Were the amounts of these credits each paid to your father?

A.-- Paid them to James Dingus whom my father was owing, and by his consent and they were credited on the note.

Q.-- Will you file the said note with your deposition as a part thereof, marked "NOTE".

A.-- I will.

Q.-- Please state whether or not you stated to A.B.Livesay at your place on last Friday that you would keep this suit in Court five years and at the same time told R.G.Livesay that it would take \$600.00 to pay the cost of the suit?

A.-- I wont say that I did or did not say them, but I rather think I did.



Q.-- Did you sate to A.B.Livesay on last Monday, when he was talking to you about coming on over here before the Commissioner that you would come when you got ready?

A.-- I guess I did.

Q.-- Is it your intention to make an inventory of all the personal estate that has come into your hands as administrator over and above what is shown in your sale bill and file the same with the Commissioner, or not.

A.-- It is my intention to give in everything that comes into my hands.

Q.-- Have you any vouchers or disbursements or payments made by you as administrator, that you intend to file with the Commissioner in your settlement, and if so will you please file the same now?

A.-- I have paid off some three or four little matters and will file vouchers for the same now.

Q.-- Did not your father have a man's saddle at the time of his death?

A.-- Yes.

Q.-- What was it worth, or have you sold it as administrator?

A.-- It was near about tore up, and I paid \$7.50 to have it fixed. When my father died the padding was torn out of it and the top was near about torn off. I had a turning plow there and the appraisers took and appraised it in lieu of the saddle tree.

Q.-- You said on yesterday I believe that there was near 300 bushels of corn, anyhow 275 bushels on the 7 or 8 acre piece of land. is this correct?

A.-- Yes.

Q.-- I understood you on yesterday, in speaking of the pature, to refer only to the salk-field pasture. How was this, and was there not some grass pasture?

A.-- There was some pasture down on the land conveyed to my wife which was probably worth \$8.00.

Q.-- What became of the mare that your father left?

A.-- I swapped her off.

Q.-- At the time your father let you have the team of mules and wagon, did he not let you have some money, making the whole amount up to \$300.00, as claimed by him?



A.-- He did not let me have any money when he let me have the mules.

Q.-- Did he not let you have some money to go to Texas on, or a short time before you started there?

A.-- He did not.

Q.-- Did he not often let you have money and furnish you other means from time to time, and pay debts for you?

A.-- He did, and I so stated yesterday. I can't state any more than I have stated about it.

Q.-- Did he not let you and your brother Sam have \$300.00 in gold at one time when you were engaged in the mercantile business?

A.-- He did not. He let us have some greenback, as I stated yesterday, and I told you how he got it back.

Q.-- Did Cowan McClung & Co. ever owe you and your brother Sam any money?

A.-- No sir, not that I know of.

Q.-- Did they ever pay your father any amount for you and Sam?

A.-- They did not, we owed them.

Q.-- You stated on yesterday that your father paid for you at Sneedville \$144.00, and that he paid some other amounts for you mentioning them, and that these sums were settled between you and your father in some other dealings. Please state in what dealings and in what manner they were so settled?

A.-- He already had it in his hands. He got those goods and other things that made him whole in it.

Q.-- I thought you stated that he got those goods in settlement of the other money that he had let you and Sam have, outside of the \$400.00. How was this?

Q.-- I said he got enough with the goods, the \$250.00 that he recovered of Cowan McClung & Co. and the \$100.00 account, to pay off these matters.

Q.-- Is it not a fact that you were all the time indebted to your father and that your father was never indebted to you on any account?

A.-- I considered him in debt to me about as much as I was to him.

Q.-- Please state what he owed you for?

A.-- He owed me and Sam a store account, and he got the goods which were ours.

Q.-- Did he get all the goods



Q.-- Did he get all the goods, or just the portion that he and M. D.Livesey hauled off?

A.-- I remember there was some shoes and other goods brought up to my father's, besides the load that Mileham hauled.

Q.-- Do you know the amount of goods that your father got and their value?

A.-- I guess they would have run up to \$400.00 or \$500.00. He lumped off some of them to McPherson & Watson at \$118.00. He sold some in the neighborhood and then probably lumped off the balance.

Q.-- You stated awhile ago that your father let you and Sam have some greenback. I don't believe you stated how muc. How much was that

A.-- I don't recollect just the amount.

Q.-- Did not your father furnish you some money to use in your present mercantile business?

A.-- Nothing more than he would let me have a little change now and then when I would need it, and I would hand it back to him. He did not let me have money to use in the business. He had no interest in the business.

Q.-- Whose composes the firm of S.C.Surgener & Co.?

A.-- S.C.Surgener now owns the whole business. L.S.Pridemore was formerly one of the firm, but has withdrawn.

Q.-- You stated on yesterday that you father had about \$300.00 in money. Was the \$300.00 that he got from H.C.Baker?

A.-- I have heard it was, but don't know it to be a fact.

Q.-- Did he not have \$100.00 in addition to this that he had had for some time, and that he said that he kept for his doctor bills and funeral expenses?

A.-- I don't know anything about his having any such \$100.00. I never heard him say anything about it.

Q.-- At the time that you made a sale of some personal effects. How did you advertise the sale, that is where and to what extent?

A.-- I advertised it by posting written notices at three places, one at Blackwater, one on storehouse floor at home, and one at Democrat. These notices were put about ten days before day of sale.

Q.-- Were any of the other children present at the sale?

A.-- I don't believe there was.

Q.-- Did you notify any of them or tell them about the sale?



A.-- Well it was talked around there, and wrote S.R.Surgener the date fixed for the sale, and told him to bring in the saddle-bags to be sold.

Q.P- How many bidders were present during the sale?

A.-- Seven or eight.

Q.-- Did you not tell A.B.Livesay at your place last Monday, when you and Mr. Livesay were talking about some kind of a trade, that the last piece of land conveyed to you by your father was well worth \$700.00 or words to that effect?

A.-- I may have said it, I don't say that I didn't.

MET PURSUANT TO ADJOURNMENT, Jan. 24th, 1905.

Re-Examination by M.G.Ely.

Q. Did not your mother own about 60 acres of the land conveyed by your father and mother to O.P. and Nancy Levisay, her own right?

Excepted to because there should be better evidence, and this evidence is inadmissible.

J.W.Orr, Atty. for Plffs.

A. She did, and I have her original deed to the same and here file it, reserving the right to withdraw it when this suit is decided. From the best I can learn as regard to this land a portion of it is included in the G.W.Pridemore land and a part ~~in the~~ probably, a small part or corner of the ~~in the~~ Harris land, and I cannot state definitely how much of it is embraced in the two deed to O.P.Levisay and wife.

And further this deponent saith not.

*A.R.Surgener*

O.P.Levisay, another witness of lawful age, being first duly sworn, deposes and says:

(Witness Called by Nancy E.Levisay)

Q. State your age, place of ~~existence~~ residence and occupation.

A. I am 50; residence Pennington, Va.; and am a gentleman of leisure at present.

Q. State your relationship to Nancy E.Levisay.

A. She is my wife.

Q. How long have you and your wife been married?

A. We married in 1877.

Q. At the time that you and your wife were married, did your wife's father give her any property, and if so what was it?



A. He gave her a little cow, a \$16 cow; a \$21 colt; a little gilt sow and two pigs; and two sheep.

Q. Since that time, up to the date of his death, did your wife's father give to her or to you any property of any kind, and if so, what was it?

A. Nothing that I know of.

Q. It is alleged in the plaintiff's bill that S.S. Surgner conveyed two tracts of land, one to you and your wife, and the other to your wife. State whether or not these two conveyances cover the same tract of land, and if not what is the difference?

A. They cover the same tract, all but one don't cover quite as much as the other one. The last deed covers <sup>less</sup> ~~more~~ land than the first by about 12 or 15 acres.

Q. How did it happen that these two deed were made for the same property?

A. Well, the way that it came about, I was owing him a little on the land at the time and I proposed to let him have back that 12 or 15 acres at \$200; this was to go on a note which I ~~owed~~ <sup>owed</sup> him at that time on which there was a balance of the rise of \$300, the balance of the purchase money on the tract of land conveyed by the first deed to me and my wife jointly. Then he made me a deed covering the residue of the tract after cutting out the 12 or 15 acres. He said he wanted to make me a new deed. He then made the deed to my wife alone. He went on to tell me the reason he wanted to make the deed to my wife. I was owing some little debts alogn about that time. Some little debts come up some times that are a little hard to pay. He said if I was to drop off and things the way they were they could sell the land from my wife for the debts against me. Another reason he gave was that the way he wrote the last deed the taxes would not be so high. In the ~~mane~~ <sup>same</sup> time he was writing the last deed he had my two bonds and he tore them into two and laid them in <sup>the</sup> fire--that is he said he laid them in the fire.

Q. In the first deed that was made there is cited a consideration of \$1650.00, \$919.33 of which is in hand paid, and \$730.67 was unpaid. I will ask you to state if since the execution of said deed you have paid said sum \$730.67?

A. I have paid it.

Q. Have you the notes, and if so file them as part of your deposition, as exhibits "Levisay notes".



A. I have the notes, there are two of them. They are each dated Nov. 29, 1895, and bear even even date with the acknowledgment of said first deed; one of the is for \$630.67, and the other for even \$100, making a total of \$730.67; the large note is due one day after date, and the small note is payable March 1st, 1896.

Q. Was any part of these notes which you have filed with your deposition given to you or your wife by Mr. Surgner, or did you pay them off in full?

A. I paid them off in full and more than in full.

Q. Why was it that you paid more than the notes amounted to?

A. Well, it seemed that I had to pay until he was satisfied and then he turned me over the notes.

Q. Did you keep an account of the payments that you made to him?

A. I did.

Q. Have you that account with you?

A. I have not.

Q. State as best you can from your recollection the amount which you did pay Mr. Surgner for the land.

These enquiries and answers in reference to an account and payments made on the land are excepted to as incompetent, because S.S. Surgner is dead.

J.W. Orr, Atty. for Plffs.

A. I don't recollect exactly, but my best recollection is I paid him \$2100 or \$2200.

Obj.-- This answer is further excepted to because in plain conflict with the recitals and provisions of the deed, if the witnesses position in regard to the transaction is correct.

J. W. Orr for plffs.

Q.-- Was any part of the purchase price mentioned in the said deed, as having been paid in hand, given to you or your wife, or had you actually paid up to the date of the execution of that deed, the amount recited in said deed?

A.-- I had paid it at that time.

Q.-- Was the price that you agreed to pay for that tract of land a fair price for the land at the time that you entered into your contract with Mr. Surgener?

A.-- I thought it was a fair price.

Q.-- Did you not pay him \$300.00 more for the piece of land than you had agreed with him in the verbal trade before you came, put it in writing?



Obj.--Excepted to as incompetent, S.S.Surgener being dead.

J. W. Orr for plff.

A.-- Yes sir, I did that. I had bought one piece of land from him, had taken a title bond and had it paid for. The price paid for this tract was \$700.00. Then he wanted to sell me some more land. He first wanted to sell me the upland without the bottom. I refused to buy any more ridge land unless I could get some bottom land and a place on which I could live, or build. We did not trade at that time. Sometime afterwards he came back and said he had took a notion to let me have the piece of bottom land. He let me have the up-land and the piece of bottom for \$800. He said we would not draw ~~up~~ any writings that day, that it would cause a wracket if they found out that he had sold me the bottom land, that he would have to tell his folks that he did not sell it. So when we did meet after that to fix up the business he said he did not sell me that piece of land in bottom with the other~~x~~ land. I had been paying him some along, and I told him that if he did not let me have the bottom land we would recant the trade and he could pay me my money back; So Tom McPherson came there with him to take the acknowledgement. I told him that the other line ran through the house and that my land was in such a shape that I did not want any body to live there. I told him that if I did not get the little bottom I would not take the up-land. When I told him that the line cut through the house, he said it didn't, and we got out and looked. Some of them said, "Old man he has got<sup>don</sup>". He then agreed to sell me the bottom for \$300 more, which made \$900 for both pieces. Then he drew up the deed, or had it draw~~war~~ up for both pieces of land and the first piece also, which made three pieces in the deed, which is the deed of Nov. 26, 1895.

Obj.-- All the statements of this witness in reference to the tradess and transactions between himself and S.S.Surgener deceased, are excepted to because the witness is incompetent S.S.Surgener being dead, and because there is better evidence, or should be, of those transactions.

J. W. Orr, for plff.

Q.-- It is stated in some of the depositions by some witness that Mr. Surgener said he had given you a part on one of the notes for the land. Please state whether this is a fact.

A.-- I paid the notes all off, and he gave me nothing on them.



Q.-- S.R.Surgener said in his deposition that Mr. Surgener said in your presence "Oliver need not be claiming that he has had nothing for he has". State whether you heard Mr. Surgener use any such language in your presence.

A.-- I never heard him use any such language.

Q.-- Did Mr. Surgener ever claim to you that he had given you anything, except the cow, the colt, the sheep and the pigs, which you say he had given you.

A.-- He never did.

Q.-- In your wife's answer she states that there is a note due the bank of \$400.00. I'll ask you to state if this note is not due to Henry J. Morgan instead of the Powell's Valley Bank?

A.-- I think it is, and think that the note at the time it was executed was due to the Powell's Valley Bank, Mr. Morgan being the owner of the Bank at that time.

Q.-- I'll ask you to state what part of the note thus spoken of is due by you and your wife, and what part is due by the estate of S.S.Surgener?

Obj.-- Excepted to because this witness is incompetent to make any statement as between himself and wife and Mr. Surgener, or their liability on said note, because S.S.Surgener is dead.

J. W. Orr for plff.

A'-- When we first made the note we got \$354.00. He got \$200.00 of the money and I got the residue amounting to \$154.00. I ran on a little while and he and my wife were in town one day and they went in and renewed the note. He owed Judge Morgan or the Bank or some of them there \$50.00, so my wife told me, and said he had that \$50.00 put into the new note. They paid the \$4.00 and the new note was made for \$400.00. I was in town afterwards and signed the note myself.

Q.-- Your wife states in her answer that the \$200 worth of land you let him have as payment on the purchase price of the land you had bought of him was to come back to you in case the \$200 which Mr. Surgener got out of the money from Judge Morgan was paid by you. Now state if you please whether this was the agreement, and whether you got the land back?

Obj.-- This question is excepted to on account of the incompetency



of the witness as above stated, Mr. Surgener being dead, and on account of being in conflict with the deeds between the parties, which are the best evidence.

J. W. Orr, for the pliffs.

A.--That was the agreement, but I never got the land back. I was to have the land back if I wanted it.

Q.--Has not Mr. Surgener sold this land, and if so to whom, and for what price?

A.--He sold it, but I do not know what it was avlued at, as he sold it and some other land together.

Q.--Who has paid the interest upon the note to Judge Morgan?

A.--I have paid it.

Obj.--Excepted to on account of incompetency of witness as above stated.

J. W. Orr, for pliff.

~~XXXX~~ Cross-examination by plaintiffs.

Not waiving the competency of this witness, but replying thereon, plaintiff's counsel proceeds to cross-examine.

Q.--Have you the \$400 note executed to H. J. Morgan above spoken of? If so, or if not, will you please file a copy thereof and all endorsements thereon with your depositions marked "Morgan note".

A.--No sir, I havn't got the note. ~~XXXXXXXXXXXXXX~~

Counsel for Nancy E. Livesay will file a copy of the note spoken of and permit the commissioner to compare the copy with the original and attest the same as a proper and exact copy.

R.L. Pennington counsel for  
Nanch Livesay.

Q.--I believe you state in your examination in chief that after the first deed was made to you and your wife, and about the time that the second deed was made, you let Mr. Surgener have \$200 worth of the land embraced in the first deed back, and that he gave you credit for that sum on what you then owed him on the land? Is this correct?

A.--Yes. that was the understanding.

Q.--You also state "in the mean time, he was writing the last deed he had my two bonds. He tore them in two, and laid them in the fire, that is, he said he laid them in the fire." What bonds do you have reference to?

A.--It was the title bonds he made me to the land before he



made me the deed.

Q.--Please state anything you may know in reference to any advancements made by S. S. Surgener, dec'd, in his lifetime to his son, S. R. Surgener?

A.--I do not know anything only what I have heard him say. I heard him say at one time that he had to furnish Bud a little money, it was \$175 or \$200. At another time he told me that he went on a note with Bud to Bakers for \$400 or \$500 and Bud refused to pay it and he had to pay it off. That is all I remember in regard to Steve.

Q.--State anything you may know in regard to advancements made to Sarah Roberts by her father?

A.--I have heard him state that he has paid out a sight for her, and that she had had her part, but that he could not help it that he had to still keep her and help her. I know personally of him giving her a horse at one time that he paid \$75.00 for. I also know of his giving her a little piece of land, but I do not know what it cost.

Q.--State anything you may know in regard to advancements being made to A. R. Surgener by his father?

A.--I have heard him say a right smart, but I do not know anything more than has been stated in these depositions by other witnesses. I heard him say he let Daniel Johnson have a piece of land on a bunch of goods for Abe and Sam. I don't know whether I ever heard him say what the land was worth, but I heard him say afterwards that he had about \$700 in the goods. I supposed from what he said that it was the land and money that he had let them have that constituted the \$700.00 he had in the goods. I also know of him letting Abe have a pair of mules and a wagon. I afterwards bought the wagon and paid \$35.00 for it. I think he got either \$225 or \$250 for the mules. They were right good mules. I heard him say he paid some money for Abe at Sneedville, but I do not know how much. I think I also heard him speak of paying some money for Abe at Powell's Valley Bank, but don't remember how much.

Q.--Please state whether or not A. R. Surgener and his wife paid to S. S. Surgener the full value of the land he conveyed to them, or was there an advancement made in the price of the land?

A.--I never knew much about the first tract of land, but my un-



derstanding about that from the old man was that that land was to be Abe's entire part and he was to take care of his mother as long as she lived, and that the \$425 was to go to Sarah as her part. I do not know whether any of the \$425 was paid or to whom paid at any time. Of course Sarah has got means there from Abe and the old man all along at different times.

As to the last tract conveyed to Abe, \$350 is not in my opinion a full price for the land. To sell it off from Abe I don't know what it would bring. I think it is worth \$700 to \$900 to Abe. I believe Abe told me it was worth \$1000.00.

Q.--Please state anything you may know in regard to any advancements to Mariah Livesay?

A.--~~THESE ARE THE ONLY ADVANCEMENTS I KNOW OF~~ I know of nothing except the old mercantile transaction which I have been informed is claimed to have been settled up, and a piece of land which he conveyed to her, which, in my opinion, is worth \$100 per acre, and I think there is from 7 to 10 acres of it.

Q.-- By Mr. M.G.Ely, attorney A.R.Surgener et al.

Do you know anything about Mr. S.S.Surgener getting any goods out of the stock that you and Steve had bought from Abe and Sam to pay himself for what he had put into the goods?

A.-- I know nothing about, except that I heard of it at the time the goods were hauled off, and I saw some of the goods there at his house.

Q.-- How much did you and Steve get out of the goods, if anything.

A.-- Nothing at all, nor did we pay anything.

Q.-- Please state when the two notes that you have filed with your deposition were lifted by you from Mr. Surgener?

A.-- He delivered them to me about two years ago.

Q.-- Who endorsed the credits on the \$100.00 note.

A.-- I don't know.

Q.-- Do you know whose handwriting they are in?

A.-- I do not.

Q.-- Did not Mr. S.S.Surgener deliver you these two notes when he executed to your wife the second deed, and did you not then give him new notes?

A.-- No sir. He has never had my notes since I paid those two notes off. I let him have that tract of land back to get even with him.



Q.-- Did your wife at any time give him any notes?

A.-- Not that I know of.

Q.-- The second deed made to your wife recites a consideration of \$900.00 part paid and part not paid. Please state how much was paid at that time, and how much was unpaid.

A.-- It was all paid and nothing unpaid at that time.

Q.-- Why then did Mr. Surgener hold your notes until about two years ago?

A.-- He claimed he did not have the notes with him at the time.

Q.-- Did you take any receipts against the notes?

A.-- No sir.

Q.-- Please state how and when you paid the \$900.00?

A.-- I had paid a portion of it before he made the first deed. I can not state exactly what in. My account shows that I paid hogs, meat, wheat, corn, horse, mule colt, cash &c.

Q. State how and what way you paid the \$780, mentioned in the first deed?

A. As well as I recollect I paid it all in cash, except the \$200, that was paid in the land he took back.

Q. In Mr. Surgner's attempted will, he attempts to give your wife five acres of land, and says it is in a deed made to her, is that five acres in the first or second deed he made to her?

A. It is in the first and second deeds both, and is a part of the land that was in the first piece of land that I bought from him for \$700.

Q. How many acres was in that first piece that you contracted from him?

A. There might be 100 acres of it, I do not know, something like that amount I think.

Q. Give the boundaries of the first 100 acres that you contracted for at \$700.

A. It run from the weeping willow S.E. up a hollow to Pridemore's line; then about due east up and across a ridge to J.W. Dingus' line; with Dingus' line out the top of a ridge running north to a chestnut oak corner; then down the ridge with Dingus' line to the branch to a beech, the east line; north again to the top of another ridge, and with the top of the ridge west to the Howard line; with the Howard line to a splitting line of the old Howard survey; then west with the



splitting line to the creek; and down with the creek to a little fence, running from the creek to the garden ~~southward~~ southward; with the northeast side of the garden to the corner; from the corner of the garden to the weeping willow.

Q. Were there any improvements on this boundary of land at the time you contracted for it?

A. Nothing but a little old orchard on a rocky point.

Re-X-Examination by Atty. for Plffs.

Q. State any acts of coercion or undue influence exercised by A.R. Surgner upon his father in procuring the deeds from his father to himself and wife, or any complaints made by S.S. Surgner, dec'd, in regard thereto.

Objected to because the validity of none of the deed are attact, and there is no issue of the kind raised in the pleadings, and is immaterial.

M.G.Ely, for &c.

A. I do

Before S.S. Surgner and his wife made the first deed to Callie Surgner and A.R. Surgner's heirs, S.S. Surgner came to my house and said he wanted to stay with us, and brought his trunk with him, and said that A.R. Surgner was treating him so badly that he could not stay at home in any peace, that he was in danger of his life. He stayed at my house two or three days, and one day while he was gone from my house, A.R. Surgner sent and had his trunk hauled back home, and Mr. S.S. Surgner then went back home. In a short time after this the deed was made to Callie Surgner and A.R. Surgner's heirs. After this deed was made S.S. Surgner talked to me about the deed and said that he had made the deed to A.R. Surgner's wife, and his heirs, and he said that it was in the deed that if Abe ever drank any more that the deed was to be invalid, but I have been informed that this deed was afterwards torn up and another deed made. Mr. S.S. Surgner also said to me that the deed was made to Abe's wife and his heirs so that Abe could not dispose, or trade or run through with it. He also said that the land conveyed was to be in full of Abe's ~~xx~~ interest ~~xx~~ in his estate, provided Abe took care of his mother, and was also to be in full of her interest, that is S.S. Surgner's wife's interest in his estate. After S.S. Surgner made this first deed I have heard him say at different times that he had given Abe all he intended him to have and that he would not give him any more land that he would rather see it sunk than for Abe to drink it up. He always claimed to me that



that Abe had gotten more than his part, that he had gotten it in a way that he (S.S. Surgner) could not help it. He claimed that he would not have let Abe have as much as he had if it had not been for his mother, that she was always after him to help Abe and give Abe so and so. In reference to the last deed to A.R.Surgner, I never heard Mr. Surgner say anything about it, but I did hear A.R.Surgner say on one occasion, to S.R.Surgner and myself, that we need not be complaining that he would not have had his last deed if he had not made it himself, and he also said he had the will made too. After he made this statement he said "I would not take \$3000 now for my farm". This was about all he said about it at that time, and Bud(S.R) and I walked off.

Re-Examination.

Q. 1. Please state whether or not your wife is at this time able to come to Jonesville to give her deposition in this case?

A. 1. I don't think she ought to come out such weather as this, her health is not good no way. If there comes a warm day though I will bring her out any day you will all be here. We fixed to come the day it rained, but when it rained we could not come.

And further this deponent saith not.

*O. P. Livesay*  
.....

APRIL 22nd, 1905.

A.R.Surgner, being further introduced, deposes and says:

Q. 1. I herewith hand you a note of \$30.00, dated on the 19th day of October, 1903, signed by your father, S.S.Surgner, deceased, and which has been filed before the commissioner as a debt against the estate of S.S.Surgner by Nancy E. Livesay. Please examine the same, and state whether or not it is a just claim against the estate and tell all you may know concerning the said note.

A. 1. It is not a just claim against the estate. I know all about the execution of the note and what it was executed for. It arose in this way: O.P.Livesay, the husband of Nancy E.Livesay, was indebted to I.W.Campbell and I.W.Campbell & Son in two judgments, on which execution had been ~~xxx~~ issued as I was informed, and the said O.P.Livesay and Nancy E., his wife, being the owners of two cows they were fearful that one of the cows would be taken on ~~one of~~ the executions and they pretended to sell <sup>one</sup> of the cows to my father,



S.S.Surgner, to prevent the cow from being levied on by the officer, and this note was executed as a pretended purchase price of the cow. The cow was sent to my father's and remained there ~~xxx~~ and was milked awhile. But finally the cow was returned to O.P.Livesay and Nancy E.Livesay's farm, where she has remained ever since and is treated by them and their tenants as their property. The consideration for which the note was pretended to be executed therefore failed and the debt is not a just debt and should not be paid by the estate of S.S.Surgner, deceased, as ~~xxxx~~ the consideration wholly failed, and it was in fact a fraudulent transaction.

The right to cross-examine this witness is reserved for the counsel for Nancy E.Livesay.

And further this deponent saith not.

...*A.R.Surgner*.....

April 27th, 1905.

A.R.Surgner, being further introduced ~~xxx~~ on behalf of himself, deposes and says:

Q.1. Please state whether or not the \$300 cash left on hands by your father at the time of his death should be charged to you~~r~~ as Admr. of his estate, and if not why not?

This question or any answer thereto is excepted to, because irrelevant, immaterial and inadmissible, and because the question calls for an opinion from the witness, which it is the duty of the commissioner to ~~perform~~, and it was the duty of the Admr. upon his qualification as such to take charge of all the personal estate of the decedent and administer the same, and if any part of that personal estate is in the hands of another person it is his duty, if necessary, to take legal proceedings to acquire control of the same, and he should be charged with every item where this has not been done.

J.W.Orr, Atty for Plffs.

A.1. I don't think it should; because it was given away and never came into my hands after I qualified, and I can't get a hold of it. My mother told me that my father gave her the money two months before my father's death, and since his death she said she had the money in her possession before I qualified as Admr., and since my qualification as Admr. I have not been able to get possession neither have I brought suit to recover it, neith<sup>er</sup> have I brought suit to recover it for it would be running the estate to expense for nothing, because



she has no property on which an execution could be levied. She had no property of any time besides what the law would give her. I know that she gave Sarah Roberts \$50, for which I afterwards secured her receipt; she also gave S.R.Surgner \$50, for which he refused to give me a receipt. I do not know any thing about the other \$200. She has been giving her grandchildren <sup>n</sup> anoud some money.

The foregoing answer is further excepted to as to any statement by the witness as to any thing his mother may have said, because inadmissible, and as to her actions in the matter, because no excuse to him.

J.W.Orr, for Pliffs.

X-Ex.

1. As I understand you, your statement in regard to the \$300 are based entirely on what your mother told you, is this correct?

1. This is correct, and I never saw the money.

2. In your deposition in chief in reference to the \$30 note filed by Nancey E.Livesay, you stated in effect that this was a sham trade to prevent the collection of an execution against Nancy Livesay and O.P.Livesay, how do you know it was a sham trade for this purpose, and how did you get your information?

A.2. I got it from my father there in the store when I wrote the note. He came in and ~~wrote~~ told me to write the note, and while I was writing it he said that this is the way to fix it on account of their old debts. My best recollection is the Campbell debt was mentioned, it was being pressed at that time.

Q.3. Your father had bought the cow, had he not, and after he had bought he he had become dissatisfied with her had he not, and wanted to exchange her for another cow?

A.3. Nancy was there and I told my father that we could not feed the cow for the milk she was giving, and he spoke to Nancey to exchange cows and she said she would. I started the boys with the cow one morning, and O.P.Livesay and my father were standing there. After the boys had got about a hundred yards with the cow that we were sending home, O.P. hollered at the boys not to bring the other cow that he had let another fellow have her. I told them to take the other cow on that we did not have any use for her that she was not giving any milk.

Q.4. Did your father ever receive any other cow for this cow?

A.4. He never did.



Q.5. When was it that you sent the cow back?

A.5. In the fall after the note was given.

STATEMENT BY COUNSEL FOR NANCY E. LIVESAY.

---

The claim filed by Nancy E. Livesay for \$30, for the cow spoken of in the above deposition, is withdrawn, with the understanding that the cow in question is to remain the property of Nancy E. Livesay, and said note is to be cancelled.

R.L. Pennington. Atty. for Livesay.

Q.6. By plaintiffs' counsel,

Did you ever hear your father state in your presence and Mart Percy and James Vanzant, near your father's home, or about A.R. Anderson's, that O.P. Livesay had him paid up, or about paid up for the land that he had conveyed to said Livesay and wife?

A. I never did, I never heard him say anything about their business.

I beleive the land is paid for, but I do not know how it is, I never heard my father say.

A.R. Sawyer

State of Virginia, County of Lee, to-wit:

I, A.M. Goins, Special Commissioner in the above styled cause, do hereby certify that the foregoing depositions were given and subscribed under oath, and subscribed before me, and at the times and places as above mentioned.

Given under my hand, this April 27th, 1905.

.....A.M. Goins.....

Special Commissioner.



1889.

S	2	9	16	23	30
M	3	10	17	24	..
T	4	11	18	25	..
W	5	12	19	26	..
T	6	13	20	27	..
F	7	14	21	28	..
S	1	8	15	22	29

## JUNE.

THIS BOOK WILL SAVE THE  
LABOR OF LOOKING  
UP DATES.

1890.

S	1	8	15	22	29
M	2	9	16	23	30
T	3	10	17	24	..
W	4	11	18	25	..
T	5	12	19	26	..
F	6	13	20	27	..
S	7	14	21	28	..

Received of H. Q. Owen  
in full of one note  
of one hundred dollars  
Executed by said Owen  
and J. H. Redman  
in the year about 1886  
dated this 14 day of Nov  
1890

B. B. Sawyer





### THE MOTHERS' FRIEND.

As an invigorating tonic or strength restorer, for debilitated females generally and especially for nursing mothers who need a reliable restorative, Dr. Pierce's Favorite Prescription has absolutely no equal. Its benefits are two-fold, for it not only builds up the system, but also



\$5000 Apr 122 1904

Due to Surgeons  
Fifty Dollars in cash  
one day after date

with interest

paid this April 23 1904  
in payment of

A. T. Botter



is assigned to  
 Elliott & Jones  
 Date S. S. Jones  
 Washington  
 A. H. Jones  
 1894

James W. Co  
Register  
estrato

Exhibit "A. B. R. with de-  
position of H. T. Baker.



A. M. GOINS,  
ATTORNEY AT LAW,  
JONESVILLE, VIRGINIA.



The deposition of James Vanzant, taken pursuant to agreement, on the 20th day of April, 1905, at the law office of E.W. Pennington, in the town of Pennington Gap, Va. to be read as evidence in behalf of Nancy E. Livisay in a certain suit in equity, now before ComR, A.M. Goins, for a report, and depending in the Circuit court for Lee County, and wherein the said Nancy E. Livisay is one of the defendants, and A.B. Livisay and Almiray Fletcher are plaintiffs.

Present E.W. Pennington Atty. for said Nancy E. Livisay;

" J.C. Noel " " " Plaintiffs.

The witness James Vanzant after being duly sworn deposes as follows:

Q.1. Give your name, age residence and occupation.

Ans. My name is James Vanzant; I am 68 years old; reside at Pennington Gap, Va., and am a farmer.

Q.2. Did you know S.S. Surgener, in his life time? if so, how long, and under what circumstances?

Ans. I did know said Surgener; I knew him since 1858; I lived in his neighborhood for something like thirty years; I worked for him a great deal while I knew him. I left his neighborhood something like nine years ago; but I have been back there since I left.

Q.3. Do you know O.P. & Nancy E. Livisay, his wife? If so, how long have you known them?

Ans. I have known Nancy ever since she was a little girl and Oliver for thirty years, I reckon.

Q.4. State whether you ever heard S.S. Surgener say any thing about having sold to said O.P. Livisay, or Nancy E. Livisay ~~xxxxxxx~~ any land? if so, where was the land; and state the prices paid, if you know?

Ans. I heard Mr. Surgener say that he had sold O.P. Livisay All the land on the south side of the creek; He sold the first piece to him so he said for \$750.00; the next piece for \$600.00; and the next piece \$300.00. This was <sup>all</sup> the land I heard him say he had sold O.P. Livisay.

Q.5. State whether you ever heard Mr. Surgener say any thing about whether



the land he had sold to Mr.Livisay was paid for;if so state as near as you can what he said about it.

Ans. The last time,I ever heard Mr.Surgener talk about it,he said that Mr.Livisay had him paid up,or either had him about paid up. That has been about six years ago,I reckon. I heard him have this talk about A.R.Anderson's. While Mr.Livisay was buying said land I was

working for Mr.Surgener on his place;also I worked for Mr.Livisay

Q.6. In any talk or conversation which <sup>you</sup> had with Mr.Surgener,or heard him have,State whether you ever heard him say or claim to have given Mrs.Livisay any thing out of the price of land which he had sold to Mr.Livisay.

Ans. I never did; I never heard him say any thing about giving her any thing at all in the land.

Q.7. Did you know <sup>the</sup> three pieces of land spoken of by you,and which Mr.Surgener let Mr.Livisay have? If so,were the prices he paid or was to pay,the full value of the same in your judgement?

Ans. I knew all three of the pieces; and I think he paid every dollar that they were worth at the time he bought them.

Q.8. Has not these lands been considerably improved,since Mr.Surgener let Mr.Livisay have them?

Ans. They have been improved a sight.

Cross-examined by J.C.Noel.

Q.1. How came Mr.Surgener to tell you that Mr.Livisay had paid for this land,or about paid for.

Ans. we were all setting around talking,he was telling it to other men,aswell as me.

Q.2. Who were the other men present.

Ans. I think one of them was Mart Pearcy; his son Abe,I believe was by,and may be Sam,his son,who is dead.I don't remember any one else, there might have been <sup>others</sup>

Q.3. Where did this conversation take place?

Ans. Right there at his home?



Q.4. Was Mr.Surgener pretty free to talk to people about his business affairs?

Ans. No sir;not so powerful: he would tell over about his arrangements to us fellows who were about with him.

Q.5. You and Mart Percy were working for him at that time were you not?

Ans. Yes.

Q.7. Did you ever hear him say any thing about having given any of his cheldren any thing at all?

Ans. No. I never did.

Q.8. How much land is there in the three tracts,which Mr.Surgener let Mr.Livisay have.

Ans. The first one had about 75 acres in it;the second about 40 acres and the third one about 1 1/2 acres,I reckon.

Q.9. The third tract spoken of by you is bottom land is it not.

Ans. It is.

Q.10. You think one and one-half acres would be all there is in the bottom do you?

Ans. Yes,I reckon that would be all.

And further this deponent saith not.

James <sup>his</sup> Vanzant  
mark

The foregoing deposition of James Vanzant is agreed to be read without the formal certificate,in said ~~cause~~;thewitness having been sworn. This April,20th,1905.

E.H. Huntington Atty.  
For Nancy E.Livisay.

J.B. Noel  
Atty for Plaintiffs.



Mary Ann { Home & a

Marcus Lewis { got her part

Sarah Robert { said she had got  
her part

Nancy Lewis { Land \$500 over  
\$500 net

B.R. Sargent { given \$500

A.R. Sargent { \$500 land & wages  
125-  
200-  
150  
new piece of land

David Sargent { got nothing  
if Sam. B. S { found he got \$200  
40  
something or less

A.B. Lewis { got nothing  
Alma Fields {

Marcus Lewis the  
of Lewis & Co  
at the



The deposition of A. B. Livvesay taken by agreement of parties, April 19th, 1905? to be read as evidence on behalf of the plaintiff before A. M. Goins, Commissioner, in the Chancery Cause of the said Livesay et al, against Mariah Livesay, et al.

The said A. B. Livesay being re-introduced on behalf of plaintiff, deposes and says,

Q. Where do A. R. Surgener and his wife S. C. Surgener now reside; and where at the time of S. S. Surgener's death?

A. They still live at the home place where S. S. Surgener lived and died, and were living there at the time of his death? in the same house where ~~th~~ he lived and died.

Q. How long ~~have~~ they resided with A. ~~R~~ Surgener's father previous to the time of his death?

A. Eight or ten years.

Q. Please state how they lived there if you know?

A. They all lived as the same family, lived in the same house and ate at the same table.

Q. I now hand you a due bill executed by H. T. Baker to S.S. Surgener for \$50.00 dated April 22nd, 1904. I will ask you to look at the endorsements on said due bill and state in whose hand writing those ~~xx~~ endorsement are in your opinion?

A. To the best of my knowledge and from my acquaintance with ~~my~~ the hand writing of A. R. Surgener and S. S. Surgener, deceased, I am of opinion that the two endorsements, one signed S.S. Surgener, May 20th, 1904, and the other signed Elizabeth Surgener, her mark, and not dated, are both in the hand writing of A.R. Surgener, and that no part of the said endorsement or the signature thereto are in the hand writing of S. S. Surgener, deceased.

Q/ How long was your grand-father, S. S. Surgener, deceased, confined to his bed during his last illness?

A. I think not more than from ten to fifteen days.

Q. Where you there during his last illness.

I was frequently, and stayed a good portion of the time day and night.



Q. Who waited on and took care of S. S. Surgener during his last illness?

A. Mariah Livesay, O. P. Livesay and myself and B. R. Surgener and other friends, as to Mrs. S. C. Surgener she was not able to wait on him, and done but little.

And further this deponent saith not.

A. B. Livesay

Sworn to before James W. Orr, Court in chancery,  
by consent of parties. April 19th 1905.

James W. Orr, Court.



A. B. Leuasy et als.  
vs  $\frac{1}{2}$  Depo' of A. B. Leu-  
-asy.  
Mariah Leuasy et al.

---

Fee for this depo'. 75 cts.



H. T. Baker being re-introduced by plaintiffs deposes and says:

Q.1. Please state anything that you may have heard S. S. Surgen-  
er say, or that you may know in reference to any advancements  
made by him in his life time to his daughter Nancy E.  
Livesay, if you know anything or heard anything?

A. I heard him remark that he gave Nancy E. Livesay \$700.00,  
in interest and real estate. I believe he mentioned it  
in that way. Oliver Livesay owed him notes, and when he  
would settle he would knock off the interest. The land I  
speak of him giving to her was a piece in which was inclu-  
ded some three acres of bottom land and some other land  
in connection with it.

Q.2. Did Mrs. Nancy E. Livesay ever say anything to you about  
the land that her father had given her, and if so, please  
state what she said?

A. He gave Mariah Livesay what was called seven acres, and  
Nancy E. Livesay did not consider that he had given her  
as much land as he gave Mariah, and she asked me my judg-  
ment whether her land was worth as much as Mariah's or not.  
I told her I thought I would rather have Mariah's at that  
time; and a short time after that she was at my house, and  
I told her under the circumstances it seemed that her land  
had been worth as much to her as Mariah's was to her, as  
she had had the use of her land before Mariah had got hers.  
When I stated that she contended that she and her husband  
had improved the land that was given her.

Q.3. She did not deny that she had had the use of the land did she.

A. No, Sir.



Q.4 In a conversation with you did she speak of this peice of land to which you have referred as having been given to her by her father?

A. Yes sir, that was my understanding.

Q. 5 When was this conversation as near as you can state?

A. It was along about the last of June, 1904, a short time before S. S. Surgener's death.

Q. 6 Do you know anything of S. S. Surgener, deceased, having given to his son Sam Surgener a sewing machine, and if so, please state its value.

A. I sold the sewing machine to Sam Surgener, and after he died his father paid the note that amounted to \$30.00

Q.7 Please state anything further you have heard S.S. Surgener say in reference to what he had given Nancy E. Livesay?

A. She was complaining about her father not giving her as much land as he had given Mariah, and he said to me that the land he had given Nancy was worth \$500.00. My understanding from him was that he had given her in the manner above stated as much as he could give her, and as she was entitled to.

CROSS EXAMINATION BY M.G.ELY FOR DEFENDANTS.

Q.1. I hear show you what purports to be an affidavit signed by Elizabeth Surgener and Callie Surgener, please state whether or not you ever saw this affidavit before, and if so, when and where and state under what circumstances, and file it with your deposition.

The foregoing question and any answer thereto is accepted to because the papersought to be introduced in this



3,  
connection is irrelevant, immaterial and inadmissible, being  
exparte and inadmissible for any purpose.

James W. Orr for Plaintiffs.

A.2.

Yes sir, I have seen that. I gave Mr. Surgener a due bill  
for \$50.00, and then after his death A. R. Surgener wanted  
to collect it off of me, and I told him I did not want to  
pay it until I knew I was paying it to the owner of it, or  
an administrator. I wanted to be sure of the debt when I  
paid it and pay it to the right person. This was before  
as administrator had been appointed. They claimed that  
Mr. Surgener had given the note or due bill to Mrs. Surgen-  
er. I did not yet pay the money by them claiming this, and I  
told them I would rather not pay it then, and finally they  
got Mrs. Surgener to swear that the due bill was hers, and  
I still hesitated about paying the due bill. I finally  
told Abe to put the note out I would rather pay the cost  
on it then pay it to the wrong person, and Mr. McPhearson, D.S.,  
was present and he handed it to him, and McPhearson handed  
the due bill back to Abe, and after this I was at his store  
and he had become the administrator and I paid him the  
money, and received the due bill, and he endorsed the due  
bill as ~~the~~ administrator and gave it to me, and along  
with it this paper or affidavit, which I am requested  
to file, and which I here filed as a part of my deposition  
marked "Bill".

The paper filed is further excepted to because  
it is invalid on its face for any purpose and not properly  
certified as having been properly executed and sworn to  
so as to be admissible for any purpose.

James W. Orr for Plaintiffs.

Q.2.

State whether or not you were one of the subscribing witness-  
es to a paper which S.S. Surgener sign<sup>ed</sup> in attempting to make  
a will before his death.



The foregoing question and any answer thereto is objected to as irrelevant, immaterial and inadmissible for any purpose what ever.

J.W. Orr for Plfft.

A. Mr. Surgener brought a paper to the store one day and said it was his will and signature and asked me to sign it as a witness, and I did so. It had already been witnessed by E.D.Bowen, or at least his signature was on it.

And further this witness saith not.

The signature of this witness is waived to this deposition by consent of the patties.

WITNESS CLAIMS 50cts.

~~MILAGE~~, ~~10 miles~~.



H.C.T.Ewing, a witness of lawful age, being first duly sworn,  
deposes and says for plaintiffs:

Q.1. State what official position, if any, you hold in this county.

A.1. I am County Clerk of said county, and as such the clerk of the  
Circuit court of said county.

Q.2. Are you as such clerk<sup>e</sup>the custodian of the records of said court?

A. 2. I am.

Q.3. I hand you a paper, filed with and as ~~is~~ a part of S.R.Surgner's  
deposition, in this cause, and which purports to be a <sup>copy</sup>~~copy~~ of a will  
of S.S.Surgner, deceased, probated at Sneedsville, Tenn. Please  
examine said paper and state wh<sup>e</sup>ther or not the said paper was offer-  
ed for probate in the Circuit court of this county, and if, so when?

A. 3. It was offered for probate in the said Circuit court, on the  
21st day of Sept., 1904.

Q.4. If the said Circuit court made any order on that day in refer-  
ence to said paper, will you please file a certified copy of said  
order with this your deposition, marked "Order".

A. 4. The said Circuit court did make an order, and I here file copy  
of same as requested.

And further this witness saith not.

H.C.T. Ewing



VIRGINIA,

At a Circuit Court continued and held for Lee County, at the Court-house thereof, on Wednesday the 21st day of September, 1904.

An authenticated copy of the last will and Testament of Stephen S. Surgener, deceased, and of the record of the County Court of Hancock County, State of Tennessee, admitting said will to probate in said Court, was this day presented in Court for probate, and it appearing to the Court that said Testator was at the time of making said will and at the date of his death, domiciled in this State.

It is considered by the Court that the probate of said copy in this Court be and is hereby refused.

A Copy-Teste: W. H. Ewing Clerk.

Copied From Common Law Order-Book, No. 6, page 268.



Filed with H. C. J.  
Savings Dept.

Depos of Henry  
Baker & H. C. J. Savings.

Order



The depositions of Nancey E. Livisay, and  
taken before me,

for the county of Lee, pursuant to notice hereto annexed and by  
agreement of counsel for Mrs. Nancy E. Livisay and counsel for  
the plaintiffs, at the law office of E. W. Pennington, in the town  
of Pennington Gap, in Lee County, Virginia, on the 4th day of  
April, 1905, and between the hours of 8 A.M. and 6 P.M., to be  
read as evidence in behalf of the said Nancy E. Livisay in a  
certain suit in equity, now before Commissioner A. M. Goins, de-  
pending in the Circuit Court for Lee County, wherein said Nancy  
E. Livisay is one of the defendants, and A. B. Livisay and Almira  
Fletcher are plaintiffs.

Present J. C. Noel, attorney for said Plaintiffs; and

" E. W. Pennington, attorney for said Nancey E. Livisay.

The Witness Nancy E. Livisay, being duly sworn, de-  
poses as follows:

Q 1. Give your name, age residence and occupation.

Ans. My name is Nancy E. Livisay; I am 42 years old; reside  
in Pennington Gap, Va.,

Q. 2. Who was your father?

Ans. S. S. Surgener, was my father;

Q. 3. State ~~whether~~ <sup>you</sup> who married, and whether your parents  
were willing for you to marry?

Ans. I married Oliver Livisay; and my parents were opposed to  
our marriage?

Q. 4. Were you married at home?

Ans. No, sir: we ran away to get married; we were not at home  
for some two years after I married.

Q. 5. State whether your father, S. S. Surgener, in his life time  
ever gave you any thing, if so what was it and its value?



Ans. The first he ever gave me was a colt worth \$21.00; a cow which he said he paid \$15.00; he gave me two sheep, worth \$2.00 or \$3.00; he gave me a little sow and three pigs, they might have been worth \$2.00 or \$3.00. He gave me a very few dishes, not worth more than \$3.00, I don't think; there were but a few of the dishes; he gave me another dish a few years ago, worth not over \$1.00. I asked him for this dish; it was a glass dish; he gave me a picture of himself which he had had taken with some other s at Richmond. It was not framed; I don't know what it was worth. I don't remember any thing else. My father gave me no bed; but my mother gave me two, one of which I took, and the other I gave to Noll Davis, a niece. I recend she gave us all the same.

Q.6. About how long ago has it been since you and Mr. O. P. Livisay married?

Ans. I guess it has been 26 or ~~28~~ 27 years ago.

Q.7. If you and your husband, or either of you ever bought any land from your father state as near as you can when it was, and what price did you pay, or agree to pay for the same?

Ans. I supposed we had been married some three years when Mr. O. P. Livisay bought the first land; I don't remember positively the date; I have heard my father say that he was to give \$800.00 for the first piece he bought; We bought a second piece from my father; but I can't remember how long it was after he bought the <sup>first</sup> ~~second~~ piece, untill we bought the second piece; it may have been some ten years. I think it was six hundred dollars we were to give for the second piece we bought from him; if I remember right.

Q.8. State whether your father ever made any deeds to you and O. P. Livisay, or either of you, for the lands which you had bought from him? If so, state as near as you can when he did so; tell all you remember about it?

Ans. He made us a deed; he made it to Mr. Livisay; I don't remember how long it has been, since he made the deed. It has been



a right smart while since he made the first one. If I remember right it has been 10 or 12 years ago. We paid for the land, the first and the last piece purchased; and ~~the day~~ <sup>when he</sup> the last deed was made, he made me believe that Mr. Livisay was in debt, and he wanted it made to me so that I could hold what there was of it. Mr. Livisay was opposed to this. To satisfy me ~~an~~ he gave way for it to be done that way. He would have nothing to do with it. I mentioned to him, that is my father, if that would have any thing to do with knocking me out of my part of his estate, and he replied "No, if would not". He always told me, I should have my part in his estate, I should have my part on the other side of the creek. I told him on several occasions, that Mr. Livisay was not satisfied with his kind of arrangements; and he would always say that when Mr. Livisay got out of debt, I could have it fixed back to him.

QX. So much of the foregoing answer, as relates to any conversations had with S.S. Surgener, deceased, is objected to because the said S.S. Surgener being dead, the witness is thereby rendered incompetent under the law; and so much of said answer as contradicts any thing in said deed is objected to, because the witness having received said deed, is bound by every thing therein contained.

J.C. Noel for plaintiffs.

Q. 9. Was it not a fact that the land contained in the second deed made by your father, that is the land contained in the deed dated, the 17th day of October, 1899, is <sup>a part of</sup> the same land mentioned in the deed to you and your husband, dated the 26th day of November, 1895?

Ans. Yes sir?

Q. 10. After your husband had bought from your father the second piece of land, state whether you ever heard him say any thing about making Mr. Livisay pay more for it, before he would make a deed to it? so, state what you heard him say concerning the matter?

Ans. The foregoing question and any answer is objected to, because



irrelevant and immaterial; and because the deeds themselves show the consideration to be paid. J.C.Noel for Plaintiffs.

Ans. I heard my father and Mr.Livisay talk the matter over; but I cant remember all that was said. My father seemed to want more for it; and was not satisfied, and Mr.Livisay did pay him more than first agreed upon; I don't remember how much more it was he wanted; but I know he did pay him more.

Q.11. If your father ever sent by you a note which he held on your husband, to Mr.Livisay, tell when it was; what he said about it and the amount of the note, and what note did you understand it to be?

Ans. I came from Mud Lick to see my father, about two or three years ago; he had said at diferent times, that he could not find the note, as ~~was~~ the reason he had not given it to him before; he just went and got the note and brought it and gave it to me, and said for me to take care of it; as it might be of some use to me; or words to that amount. I took and gave it to Mr.Livisay; I never even opened it and looked at it.

Q.12. I hand you a note, filed with Mr.Livisay's deposition: please look at it and State whether this is the same paper which your father gave you as above stated?

Ans. It looks to me to be <sup>the</sup> same note.

Q.13. At any time ~~s~~tate whether your father ever gave or claimed to to have given you any thing as an advancement out of the price of the lands which you and your husband bought from him?

Ans. There was nothing said about such a thing when we bought at all.

Q.14. State whether in your opinion, you and your husband paid the full value of the lands which you and he bought from your father?

Ans. We paid all we agreed to pay, and paid all it was worth at the time. I ~~think~~ thought we paid more than the lands was worth



at the time, we bought them.

Q.15. State whether your father gave you or your husband any part of the money which was to be paid for whole; that is, did he give you any part of the \$1650.00 mentioned in the deed of <sup>of said land</sup> ~~Oct., 17th,~~ Nov. 26th, 1895?

Ans. No sir, he did not.

Q.16 Was the whole \$1650.00 mentioned in said deed of Nov., 26th, 1895 paid to your father?

Ans. It was paid; and I have heard him say we had paid him all of it; I know it was all paid, and more too.

Q.17. I notice that in the second deed, that is the deed, dated the 17th day of October, 1899, which your father made to you, that the consideration mentioned in the same is "nine hundred dollars, a portion of which is paid, and a portion of is yet to pay, as ~~for~~ evidenced by notes, executed" this day of even date of this conveyance"; State why only \$900.00 was mentioned as the consideration for said land, and whether you did give your father ~~any~~ note or notes on that day or any other day, in consideration of the land mentioned in this deed?

Ans. My father said he would put \$900.00 in the deed to keep us from paying so much tax. I don't remember ~~any~~ thing about any notes. If there was any thing of that kind it has gone out of my mind entirely. For when the last deed was made, I understood, we had paid him up, and did not owe him any thing. We had paid him for the ~~xx2x18~~ land before there was such a thing mentioned that he had given me a part of the land. He told me to claim that and done the same thing, on account of debts owing by my husband. He was indebted at that time. He said at the time, he made this last deed, that if I did not claim he gave me the land, the deed would be no account. If I had any idea ~~xxxx~~ of the shape it has got into, I would not have had the deed. I did not know any thing about the law, and I did not think it would interfere with the old deed, or to prevent me from getting any thing out of my father's estate.



I ~~don't~~ don't deny saying that the land was given to me; but my father had made me believe that my husband was broken up, and unless I told that it would be taken from us; and by saying that it was given to me; we could hold it for a home. I said this a many time; but I generally, ~~X~~ further said I could not tell what I wanted to.

Q.18. State whether you and your husband put any improvements upon the land which you and he bought from your father after you bought them; if so what?

Ans. We did; the place was run down, grew up; we cleaned it up and sowed grass, repaired the house; built fencing a good deal of it; and done right smart of clearing.

Q.19. What was the condition of the little bottom piece which you bought from your father at the time it was purchased; and what has been done to it since?

Ans. When we bought it, it was cut <sup>in two</sup> ~~into~~ by the branch on one side, the creek on an other and a pond in the middle. After we bought it we put a fence in, and stopped the branch, and it has filled in over the fence, and the pond has filled up, and it is now a very nice piece of land. We made it what it is. When we bought this bottom we did so, because it was right at our door, and did not want any one else there.

Q.20 State whether you signed any note at Jonesville with your father, if so, state how long ago it has been and what your father said about it? if you remember.

Ans. It has been six or seven years ago, we were going to Jonesville and my father mentioned it to me as we went along; he told me that Mr. Livisay owed some there at the bank and he owed some; and he told me that Judge Morgan might push him at any time for the money; he said we would go in there and we would have it all put in one note and for me to sign it and he would sign it it also. Mr. Livisay was not there at the time. I told him about it when I went home. When we went in the bank, father said to Judge Morgan that he wanted what



he wood and what Mr.Livisay owed put in one note and that he and myself would sign it. I don't remember the amount of the note; if the amount was named I don't remember it. I never read the note.

Q.21. Since going to dinner have you thought any more on the question of whether you gave your father any note or notes at the time he made you the last deed,that is the deed,dated Oct., 17th,1899? if so,state what your recollections are on that question?

Ans. I have studied about it and I know I gave him ~~no~~ note; I know I signed none.I did not hear the notes mentioned any way.

X Examination by Mr.Noel.

Q. 1. When did your vfather,S.S.Surgener,die?

Ans. The night of the fourth of July,1904;some time in the fore part of the night.

Q. 2. Did you or your husband,buy from S.S.Surgener,the land mentioned and described in deed,bearing date on the 26th day of Nov., ~~1895~~ 1895?

Ans. Mr.Livisay,my husband bought the land.

Q.3. Why was the deed made jointly to you and your husband,O.P. Livisay?.

Ans. I suppose it was made to us because we bought and paid for the land.

Q.4. How much did you individually pay on this tract of land?

Ans. I had no means separate from my husband at all.

Q.5. How much,that is acres is included in the deed of Nov.,26th 1895?

Ans. I don't know. There is 175 to 180 acres,I guess.

Q. 6. At the time said ded was made,what was sais land worth per acre?

Ans. I don't know what it was worth per acre;it was in a bad shape. I don't know how to answer you for I never thought of how much it was worth per acre.



Q. 6. How and when did your husband O.P.Livisay, pay for said land?

Ans. We paid along for it; the notes show how we paid for it; we generally worked it out along and paid on it.

Q. 6. How much money did ~~xxx~~ your husband pay down at the time the first deed was made.

Ans. I don't know that is hardly fair; I suppose he paid what he was to; I don't know; I didn't try to keep such things in my mind. If I had, I would have tried to keep it in my mind; I didn't think I would ever be called upon for such things.

Q. 7. How many notes did your husband execute to your father for said land in the first deed?

Ans. There are the notes; they show for themselves.

Q. 8. Do you know of your own knowledge how many notes there were executed?

Ans. I never paid any attention to it; I know we got what we have justly by paying them off. I can't remember every thing.

Q. 9. I hand you a note for what purports to be a note for \$100.00 payable by the 1st day of March, 1896 and bearing date, Nov., 29th, 1895; the signature to which is torn off, and which said note, I find in the file of this cause: Please examine the same and tell me in whose handwriting the same is written, if you know?

Ans. I can't say who wrote it; I never paid any attention to hand writing.

Q. 10. Do you know your husband's, O.P.Livisay's handwriting, when you see it?

Ans. I don't know whether I would know it or not; sometimes I might know it.

Q. 11. In your judgement is that note in the handwriting of your husband?

Ans. I suppose when a man gives a note he writes it; that is the only way to answer you that I know.



Q.12. Does that look like the handwriting of your ~~hand writing~~ <sup>looks</sup>.

Ans. Where he signs his name and the other all ~~xxxx~~ like the same handwriting.

Q.13. The signature is entirely torn off, except one letter, is it not?

Ans. Looks like one corner was torn off.

Q.14. If your husband's name was ever signed to that note, it is entirely torn off, except one letter is it not?

Ans. Yes.

Q.15. I now hand you what purports to be a note for \$630.67, and which in your deposition in chief is the note delivered to you by your father: Please tell me if you know in whose hand-writing this note is written in?

Ans. I don't know the handwriting; I never studied handwriting; I never paid any attention to it.

Q. 16. Are there any credits written on note last handed you?

Ans. I don't see any.

Q.17. Can you tell me why the signature was torn off the \$100.00 note had not torn off the \$630.67 note?

Ans. No. How could I tell that? I don't know any thing about that kind.

Q.18. When and how was that \$630.67 note paid?

Ans. That is very unfair; it is just as I told you; it was paid just as we could pay it along. I know very well it was paid.

Q.19. When was the last payment made on it?

Ans. We paid our last payment before the last deed was made; it was all paid and settled before the last deed was made ~~before the last deed was made~~, so far as I know.

Q.20. Did you see your husband pay any thing on the \$630.67 note?

Ans. That is unfair; I guess I have, of course.

Q.21. How much did you ever see him pay at one time on the last named note.



Ans. I don't remember that; I never tried to remember it.

Q. 22. Did your husband take any receipts for the money you saw him pay on the last named note?

Ans. I don't know; I never paid any attention to that, either.

Q. 23. At the time the last deed was made, that is the deed of the 17th day of October, 1899, to whom was your husband indebted?

Ans. To several; I don't know that I will remember all; he was in debt to Campbell, Howard Maness, I don't remember whether he was indebted to Judge Morgan at that time; he was in debt a right smart at that time.

Q. 24. About how much did owe Howard Maness at that time?

Ans. I don't remember. I knew at the time he was owing what it was.

Q. 25. Can you give any idea of the indebtedness of your husband at that time, all told?

Ans. No; I have no idea; he never told me. I never asked him; I knew he owed enough.

Q. 26. Was this indebtedness of which you speak, of long standing at the time the last deed was made, or was it recently contracted?

Ans. I don't remember. I don't think it had been very long contracted before the last deed was made. Or at least I did not know any thing about it until a short time before.

Q. 27. Had your husband not been financially embarrassed, for some three or four years before the last deed was made?

Ans. I couldn't say about how long he had been in debt. I didn't know any thing about it if he had been in debt so long.

Q. 28. Why was the first deed never recorded until after your father's death?

Ans. Because of them debts; and was to keep them debts off of us; the second deed was just made to keep them debts off of us.



Q. 29. The first deed was made on the 26th day of Novemeber, 1895, and the second on the 17th day of October, 1899, nearly four years after the first deed: So if the first deed was not to prevent the collection of your husband's indebtedness; that indebtedness had been on him for three or four years, had it not?

Ans. I don't know how long; because I never knew any thing about it until father told me that, and father wanted me to have this last deed made; it was about the time this last deed was made that father told me of my husband's indebtedness.

Q. 30. I beleive you admitted in your examination in chief; that you told several people that your father had given you the land, did you not?

Ans. Yes. Of course I told that; my father told me the deed he first made was no account to me, unless I did tell that. He said the deed he made to me, was no account unless I told he gave it to me?

Voluntary statement.

I forgot to tell when I was first asked about the land purchases; The little bottom spoken of, we had to buy twice;

Q. by plaintiff's counsell.

How much did you have to pay for the little bottom?

Ans. I think it was \$300.00.

Q. 31. ~~XXX~~ Did you pay each time \$300.00 for the bottom?

Ans. We was to have it with the last piece we bought, and we paid for it, and then we had to buy and pay for it again.

And further this deponent saith not.

Nancy E. Liveray



R. A. Jaynes, another witness after being duly sworn, deposes as follows:

Q.1. Give your name, age, residence and occupation?.

Ans. My names is R.A.Jaynes, 29 years old. Reside in Pennington Gap, and am now running a livery ~~xxxxx~~ stable.

Q.2. What relation if any are you to Nancy E. Livisay?

Ans. She is my mother-in-law.

Q.3. Did you know S.S. Sugener in his life time?

Ans. Yes sir.

Q.4. Did you ever live in his neighborhood? if so, about how long ago?

Ans. I did, about three years. It has been four or five years ago. Some where along there.

Q.5. While you were living in the neighborhood of Mr. S.S. Surgener, state whther you ever heard him say any thing about Nancy E. Livesay and O.P. Livisay, buying any land from him; if so, state what he said about it; how much they paid him for the land, if any thing?

~~xAnxx~~ The foregoing question and any answer thereto is excepted to because the deeds of S.S. Surgener to O.P. & Nancey E. Livisay are the best evidence and speak for themselves.

J.C. Noel for plaintiffs.

Ans. How come <sup>him</sup> ~~to~~ say any thing you about it was, he said ~~they~~ Oliver had too much land; that ~~you~~ I ought to buy a part of it and <sup>not</sup> ~~ago~~ over home; and I said to him: "How much did he give you for that land"? and I thnk he said \$1600.00 or more; at any rate as much as \$16.00 \$1600.00. He said there would have to be something done about it He would have to deed it to Nancy, or some of Olivers debts would come against it. I told him I did not want to get my money locked up in that land; and he said he would have to deed the land to Nancy; for if he was to happen to drop off some of them old debts



would come against the land.

Q.6. If in any conversation<sup>with</sup> Mr. Surgener, made any statement as to whether Mr. & Mrs Livisay had paid for the lands which they had bought from him, tell what he said?

Ans. I don't just remmember what he said about that; After he had made that deed, I heard him say one<sup>day</sup>, that Oliver ought to be all right now; he has got his land paid for; I think, Oliver sold him back a piece of it some way. Mr. Surgener said he had bought back a part of the land, and squared up with him. He said Oliver had it paid for.

Q. 7. State if you ever heard Mr. S.S. Surgener say any thing about he and Oliver P. Livisay borrowing any money from the bank or Judge Morgan? If so, state what he said about it as nearly as you can?

Ans He owed me a little one day, and he said I don't know hwether I can pay you all of it not; if you don't nneed it. He said me and Oliver borrowed some money from Judge Morgan, I think he said and he said he had paid out some sucurity money, I believe he said, at any rate some kind of debt, and said I will not<sup>pay you</sup> all I owe you. I said that is all right.

Q. 8. About how long ago has it been since you had this conversation with Mr. Surgener about borrowing the money?

Ans. It was before I left over there; it has been four or five years ago.

Q. 8. Did he state where he had paid the security money or whatever debt it was he said he had paid out of the money which he and Oliver had borrowed?

Ans. I don't remember where he said he paid it. Nor did he state to me the amount which he had paid out of this money. He just said he had paid out some of it.

Cross examination. by plaintiffs counsel;



Q. 1. In answer to question 6 of your examination in chief, you say in subsatnce that you heard Mr. Surgener ~~ought~~ say that Oliver ought to be all right now as he had his land paid for, and that was after he had made that deed; I ~~am~~ suppose by "that deed" you mean ~~the~~ the deed made by Mr. Surgener and wife to Nancy E. Livisay, bearing date of the 17th day of October, 1899)?

Ans. Yes.

Q. 2. Do you know any thing about any advancements made by S.S. Surgener to his son A.R. Surgener in his life time.

Ans No.

Q. 3. About hwne did you move from Blacwater.

Ans.. I think it will be either four or five years this next fall.

Q. 4. How long had you been living in the neighborhood of S.S. Surgener.

Ans.. I think I lived over there two or three years.

Q.5. With whom was A.R. Surgener living while you were living in that neighborhood.

Ans.. With his father.

And further this deponent saith not.

A. P. Jaynes

The foregoing depositions of Nancy E. Livisay and A.R. Jaynes having been duly sworn to in our pesence, we hereby waive a formal certificate to these depositions, and agree that the same may be read ~~in~~ in this cause without such certificate.

E. H. Huntington

For Nancy Livisa

&&&

J. C. Noel

For Plaintiffs.



A. B. Livesay, et al,

Plaintiffs.

Vs.

In Chancery

Mariah Livesay, et al,

Defendants.

The undersigned commissioner in this cause respectfully reports that pursuant to the decree rendered therein at the last term, he proceeded on the first day of April, 1905, to sell at the front door of the court-house of this county on the terms prescribed in said decree the seven or eight acre tract of land owned by S. S. Surgener, deceased, at the time of his death, and in the bill and proceedings of which tract about 1/2 acres extends across the State line into the State of Tenn., mentioned, and directed to be sold by said decree, having advertised said sale as in said decree required, at which said sale one H. T.

Baker became the purchaser of said land at the price of \$625 .00. Said purchaser paid to your commissioner the sum of \$200.00 in hand, and for the residue executed his two notes with A. J. Baker security for the sum of \$212.50 each, due in one and two years time respectively, and bearing interest from date. <sup>my Commission amounts to \$21.60</sup> This sale is probably at a fair price, and the notes executed for the deferred payments are perfectly good, and your commissioner recommends a confirmation of said sale.

*James H. Orr, Commr.*

To the Hon. H. A. W. Skeen,

Judge of the Circuit Court for Lee County.



A. B. Leuasy et al.  
vs. Court's Report of  
3rd  
Mariah Leuasy et al.

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Filed May 1, 1905.  
J. H. T. Ewing  
Clerk.



COMMISSIONER'S REPORT.

A.B.Livesay et al.,

Compls.,

vs.

In Chancery.

Mariah Liveasay et al.,

Defts.

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To the Hon.H.A.W.Skeen, Judge of the Circuit Court for Lee County, Virginia:

The undersigned special commissioner, appointed by decree entered in the above styled cause on Dec. 22nd, 1904, reports that he, after having given notice to the parties in interest as required by said decree, and as will be seen from copy of the notice hereto attached, proceeded on the 10th day of January, 1905, at his office in the town of Jonesville, Va., the time and place designated in said notice, to do and perform the matters and things in said decree required; and the proceedings having been thenceforward adjourned and continued from day to day and time to time, and being at length completed, the result is herewith respectfully submitted.

The commissioner is directed by the aforesaid decree, as follows:

1st, To state and settle the account of A.R.Surgner, Admr. of the estate of S.S.Surgner, deceased, charging said administrator with all personal estate that came, or by due diligence should have come, to his hands as such administrator, and giving him credit for all sums legally paid out by him as such administrator, and showing what amount will be in his hands for distribution among the heirs of said estate;

2<sup>nd</sup>, To ascertain what sums, if any, were advanced by S.S.Surgner, deceased, to his heirs, and what amount will be necessary to equalize said heirs, and whether or not the widow of said decedent received what was intended by said decedent to be her interest or dower in his real estate;

3rd, To ascertain whether or not the small tract of land left by said decedent undisposed of should be sold and the proceeds thereof distributed among said heirs for the purpose of equalizing said heirs in said estate, or for distribution in any event; and

4th, To report any other matter deemed pertinent by himself or required by any of the parties in interest.

The commissioner will report upon the foregoing matters in the order above arranged--

(1), As to settlement of administration account of A.R.Surgner, Admr. &c.--

The commissioner files herewith, as part hereof, statement "A", which is a statement showing the settlement of the administration account of said Admr., as the commissioner thinks it should be. This statement, after charging said Admr. with such items as the commissioner thinks proper to be charged against him, and giving him cred-



it for all legal disbursements made by him, and for which he presents vouchers, shows a balance in the hands of said Admr., as of May 15th, 1905, of \$898.47--but it will be seen that the first administration year will not close until Dec. 3rd, 1905.

In connection with this settlement of the administration account, the commissioner considers it proper to make some explanations. It will be seen from the copy of the deed from S.S. Surgner and wife, Elizabeth Surgner, to Callie Surgner, the wife of A.R. Surgner (now the Admr. of this estate), dated April 30th, 1900, as well as by the intended will of the said S.S. Surgner, that he made provision for the support and maintenance of his said wife Elizabeth during her natural life, and in this provision she has freely acquiesced. It will be further seen from the appraisement and sale bills and from the depositions taken in this cause that the said S.S. Surgner, at the time of his death, left considerable personal property--from \$1000 to \$1200 worth at least. Of all this property the Admr. undertakes to account for only \$60.50, (See sale bill, marked "A"). From the acts and conduct of the administrator in the management of this estate, the commissioner is strongly impressed that said administrator has put forth his best effort to deprive said estate of the greater part of the property left by S.S. Surgner at the time of his death, and for which he should give strict account as said administrator. It is claimed on the part of said Admr. that his mother, Elizabeth Surgner, made claim to the money and notes left by the decedent under a claim of gift from her husband before his death, and that she claimed the personal property, not accounted for in the sale bill, under §3653 of the Code of Virginia. But the said Elizabeth fails to come before the commissioner, or produce satisfactory evidence in support of the claim of gift, and the commissioner is of opinion that she cannot have advantage of §3653 of the Code and at the same time take advantage of the provisions of said deed and will aforesaid of the said S.S. Surgner. As will be seen from the depositions, said administrator had all the property, including notes and money, with which the commissioner charges him in statement "A", in his control, or could have gotten control of the same. Hence the commissioner considers it proper under the law and evidence to charge said administrator with the various items with which he has charged him in said statement "A".



In the deed from S.S.Surgner and wife to Callie Surgner, dated April 30th, 1900, the said S.S.Surgner retains a vendor's lien to secure the payment of a note of \$125, executed to him by the said Callie Surgner on the date of said deed. This vendor's lien still stands upon the records not marked satisfied. On the back of said note there are several credits endorsed shown not to be in the hand of the decedent, and A.R.Surgner states in his deposition that his father gave him the balance of said note not covered by said credits. It seems to the commissioner that the administrator would be able to show more satisfactorily in regard to the payment of this note, especially when it is in evidence that S.S.Surgner, a short time before his death, in speaking of this note, said he "did not suppose Abe had any other intention than to pay the note". The commissioner considers this note a proper charge against the administrator, and so reports it.

It is conclusively proven that S.S.Surgner, a short time before his death, received \$300 in cash from H.T.Baker. It is further proven that he said to different persons before his death that he had \$100 set apart for the payment of his doctor bills and funeral expenses. A.R.Surgner states in his deposition that his father had \$300 in cash at the time of his death. It is further shown that a few days before his death he called for a purse that was in his trunk and that he took from it and paid Dr.Stone \$25, and that there was money left in the purse. In view of these facts, and in view of the fact that said Admr. has failed to come forward and properly account for the assets of said estate, the commissioner thinks it proper, and so charges him, with the \$300 cash, the Baker fund, and with \$75, the balance of the \$100 set apart for doctor bills and funeral expenses after paying Dr.Stone \$25.

In January last, in giving his deposition before this commissioner in this case, A.R.Surgner was asked if he had any vouchers for payments made by him as Admr. that he intended to file with the commissioner. His answer was, "I have paid off some three or four little matters and will file vouchers for same now", and at that time he filed vouchers Nos. 1, 2, 3, 4, & 5, in statement "A". Since the above date said Admr. has filed before the commissioner other receipts, and asked credit for the same, to-wit: a receipt from S.C.Surgner, dated Feb.10th, 1905, for \$100, for services and labor rendered S.S.Surgner



during his last sickness; a receipt from S.C.Surgner & Co., dated Feb.10th, 1905, for store account; and a part of a receipt from M.G. Ely, for legal services rendered in defending said Admr. in this suit. These several items the commissioner does not think proper charges against said estate. These charges were controverted by the heirs, and the Admr. ought not to be permitted to colloge with his wife, S.C.Surgner, or S.C.Surgber & Co., for the purpose of collecting debts off the estate to which they were not entitled, neither does the commissioner think it proper that the estate should pay an attorney's fee to defend him in this suit. The receipt of S.C.Surgner & Co., filed before the commissioner, is accompanied by a statement of an account, sworn to by S.C.Surgner and L.S.Pridemore, the members of the firm of S.C.Surgner & Co. These witnesses are incompetent, and not even the books of the firm are exhibited before the commissioner.

(2), As to what sums, if any, were advanced by S.S.Surgner, deceased, to his heirs, and what amount will be necessary to equalize said heirs &c.

As will be seen from the evidence, S.S.Surgner had seven children, to-wit: Mary A.Livesay, Mariah Livesay, Sarah Roberts, Nancy E.Livesay, S.R.Surgner, A.R.Surgner and S.M.Surgner.

It will be further seen from the evidence that it was the aim of the said S.S.Surgner, when one of his children would marry off, to give them a horse, cow, hog and some articles with which to start to housekeeping, treating all as nearly equal in this particular as he could, and it is admitted by all that they shared about equal in this particular. But after this comes the rub with the commissioner--"what sums were advanced by S.S.Surgner, deceased, to his heirs, and what amount will be necessary to equalize said heirs". There would be no trouble for the commissioner to report it, if the evidence told it. But it is indefinite, conflicting. There is no doubt but that it was the intention of the decedent to deal alike with all his children. The commissioner beleives he tried it. The evidence is, that in speaking of advancements to his children in his lifetime, he would say, such and such ones of them have had their parts, and such and such ones had to have more. The evidence before the commissioner upon the question of advancements is almost wholly as to what the witnesses heard the decedent say in his lifetime. A short time before







The \$150 above distributed to David Surgner, and the \$200 distributed to S.R.Surgner should be paid to them according to the provisions of the deed from S.S.Surgner and wife, Elizabeth, to A.R. Surgner, May 26th, 1904, and these sums are not charged to said A.R. Surgner, as Admr., in statement "A".

It is impossible for the commissioner at this time to figure accurately the amount of funds for distribution. The outstanding indebtedness, as shown in statement "B", which is filed herewith as part hereof, are principally security debts and it is yet undetermined what amount of the same will have to be paid by the estate.

Of the \$420.00, as of May 15th, 1905, to the estate of Henry J. Morgan, one-<sup>eight</sup>~~fourth~~ of this debt is the individual debt of the said S.S.Surgner, and the residue, <sup>\$367.50</sup>~~\$315.00~~, is the debt of O.P. and Nancy E. Livesay, with the said S.S.Surgner as security. The debt of \$243.38, as of May 15th, 1905, to A.G. Hyatt, Cashier of the Pennington Gap Bank, is the debt of Geo. W. Blankenship, with S.S.Surgner as security, and as the said Blankenship is out of the state and insolvent the estate will have to pay the whole of this debt. The debt to the Powell's Valley Bank against Brickey, Kern, Wygal and said Surgner is a security debt as to said Surgner, and the commissioner is informed that this debt can probably be made out of the principals. The other little debt of \$20 or \$25, referred to in statement "B", is a security debt, and, as the commissioner is informed, the principal being insolvent the estate will have to pay this debt also.

The commissioner reports that the widow, Elizabeth Surgner, has received what was intended as her dower in both the real and personal estate of her husband, S.S.Surgner, deceased.

(3), As to whether the small tract of land left by the decedent undisposed of <sup>be</sup> should be sold and the proceeds thereof distributed among said heirs for the purpose of equalizing them &c.--

As to this enquiry the commissioner reports that said land should be sold, and this has already been done--See report of J.W. Orr, commissioner, filed in the papers of this suit. This piece of land brought at public auction the sum of \$625, and this sum, less the commissions, \$21.50, if the sale be confirmed, will constitute a fund, together with the fund in the hands of the Admr., after the payment of the costs of this suit and the indebtedness as per statement "B", for distribution as above reported.



(4), And now having reported upon all matters specially referred by the court, or deemed pertinent by himself, and not being required by any one in interest to report upon any special matter, the commissioner herel submits this his report, along with statements "A" and "B", and the depositions considered by him in the termination of the questions before him, this May 4th, 1905.

*A. M. Goins,*

Special Commissioner.

oooooooooooooooooooo

Fee for this Report, \$ 72<sup>00</sup>/<sub>100</sub>

Fee charged to \_\_\_\_\_

I, A.M. GOINS, Special Commissioner in the above styled cause, do hereby make oath that I was diligently employed not less than 46 hours, in performing the services for which the fee above stated is charged, and do so certify, this 4<sup>th</sup> day of May, 1905.

*A. M. Goins,*

Special Commissioner.

(See Statements "A" + "B" following.)



8,  
A.R. Surgner, Admr.,

In Account with

The Estate of S.S. Surgner, Dec'd,

Dr.

Cr.

1905,		
Dec. 3--To	Amt. of Sale Bill this day due, . . . . .	\$ 60.50
"	Additional items which should be charged to Admr.,	
	Farm Bell, . . . . .	1.00
	Saddle Pockets, . . . . .	5.00
	Money left by decedent, rec'd from H.T. Baker,	300.00
	Bal. of money set apart for doctor bills, bu-	
	rial expenses &c., after paying Dr. Stone \$25, .	75.00 ✓
	Two notes on H.T. Baker, dated 4/22/'04, . . . .	200.00
	Int. on same from 4/22/'04 to 5/15/'05, . . . .	12.77
	Note against Callie Surgner, dated 4/30/'1900,	
	and payable 12 mos. after date, . . . . .	125.00 Y
	Int. on same from 4/30/'01 to 5/15/'05, . . . .	30.31
	Mare left by decedent, not sold, . . . . .	100.00 ✓
	County claim, . . . . .	12.50 ✓
	One heiffer, . . . . .	20.00 ✓
	Sow and 4 shoats, . . . . .	23.00 ✓
	Bal. on corn, hay and pasture, not accounted	
	for in Sale Bill, . . . . .	35.00 ✓
	Sewing machine, . . . . .	12.50 ✓
	Bureau, . . . . .	12.00 ✓
	Cupboard, . . . . .	5.00 ✓
	Bed and bedding, . . . . .	15.00 ✓
	Lounge and bedding, . . . . .	4.00 ✓
	Reasor, . . . . .	1.00
	Clock, . . . . .	2.00
	Wash stand, . . . . .	.25
	Chairs, . . . . .	5.00 ✓
	Dishes, . . . . .	10.00 ✓
	Cook stove, . . . . .	5.00 ✓
By Amt. pd.	H.C.T. Ewing, clerk, -- See Vouch "1",	\$ 2.50
"	" " J.L. Glass, appraiser, " " "2",	1.00
"	" " J.W. McPherson, " " "3",	1.00
"	" " W.M. Hickam, " " "4",	.50
"	" " S.H. Livesay, " " "5",	1.00
"	" " S.C. Surgner, Casket &c., " " "6",	92.00
"	" " on tax-ticket, 1903, " " "7",	6.77
"	" " M.G. Ely, legal services, " " "8",	15.00
"	5% commission on \$1071.83, the amt. the Admr.	
	should account for, . . . . .	53.59
"	Bal. in hands of Admr. to square, as of 5/15/'05,	898.47
	SQUARE, . . . . .	\$1071.83 \$1071.83
TO BAL. IN HANDS OF ADMR. TO SQUARE, BRO'T DOWN,		\$ 898.47



The Estate of S.S.Surgner, Dec'd,

In Account with

His Creditors.

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To note executed May 10th, 1900, by O.P.Livesay, Nancy E.Livesay and S.S.Surgner to Henry J.Morgan, and payable one day after date, (See copy of note filed, marked "a"), for . . . . .	\$400.00	
" Int. on same from 7/10/'04 to 5/15/'05., . . . .	20.33	
To Amt. due as of 5/15/'05, . . . . .	\$420.33	\$420.00

---

To note executed April 1st, 1904, payable 12 mos. after date, to A.G.Hyatt, Cashier Pennington Gap Bank, by George W.Blankenship and S.S.Surgner, (See copy of note filed, marked "b"), for . . . . .	\$241.57	
" Int. on same from 4/1/'05 to 5/15/'05, . . . . .	1.81	
To Amt. due as of 5/15/'05, . . . . .	\$243.38	\$243.38

---

To note executed to Powell's Valley Bank by E.N. Brickey, Floyd Kern, Susie Kern, H.C.Wygal, with S.S.Surgner as security, for . . . . .	\$ 82.50	
" Int. on same from 6/23/'04 to 5/15/'05, . . . . .	4.43	
To Amt. due as of 5/15/'05, . . . . .	\$ 86.93	\$ 86.93
TO TOTAL ABOVE INDEBTEDNESS, as of May 15th, 1905, .		\$750.64

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In addition to the above debts, the commissioner is informed that there is probably another small security debt outstanding that has not been filed before the commissioner of probably \$20 or \$25.

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NOTICE.

At a Circuit Court for the County of Lee, continued and held on the 22nd day of December, 1904, at the court-house of said County:

A.B.Livesay et al.,	Plaintiffs,	)	
vs.		)	In Chy.
Martha Livesay et al.,	Defendants,	)	

EXTRACT FROM DECREE.

\*\*\*\*\*On consideration thereof, it is adjudged, ordered and decreed, that A.M.Goins, who is appointed a commissioner for the purpose, do state and settle the account of A.R.Surgener, Admr. of the estate of S.S.surgener, deceased, charging said administrator with all personal estate that came, or by due diligence should have come, to his hands as such administrator, and giving him credit for all sums legally paid out by him as such administrator, and showing what amount will be in his hands for distribution among the heirs of said estate.\* Said commissioner will also ascertain what sums, if any, were advanced by S.S.Surgener, deceased, to his heirs, and what amount will be necessary to equalize said heirs, and whether or not the widow of said decedent received what was intended by said decedent to be her interest or dower is his real estate; and whether or not the small tract of land left by said decedent undisposed of should be sold and the proceeds thereof distributed among said heirs for the purpose of equalizeing said heirs in said estate, or for distribution in any event. Said commissioner will report on any other matter deemed pertinent by himself or required by any of the parties in interest. And will return with his report the evidence upon which said report is founded.

A copy, Teste:

....., Clerk.

The parties interested in the decree from which the foregoing is an extract, will take notice that, on the 10th day of January, 1905, at my office in the town of Jonesville, I shall proceed to execute the same, when and where they are required to attend, with such books, papers, vouchers, and evidence as will enable me to comply with the order of the court. This Dec. 31st, 1904.

.....  
Commissioner.



A. B. Linsay et al., Plffs  
vs. In Chy.

Martha Linsay et al., Defs

Court's Rept. Jan. 10, 1905.

Legal service of the within  
notice is accepted.

May 21, 1905.  
On & sel, attys  
for A. B. Linsay  
& Harold Fletcher.

C. T. Duncan for

Mrs. Milnes Linsay.

James E. Linsay for

L. J. Linsay et al. for

infants.

W. H. Linsay, atty for A. B. Linsay  
Donald Roberts and Elizabeth Linsay.

to certify with the order of the court. This was done by the  
attorneys present, and the order was signed by the court.  
The order was signed by the court on the 10th day of January,  
1905, and the notice was served on the 10th day of January,  
1905.

.....



- This report is excepted to and should be re-committed because: -
- 1st. The admr is charged with what is absolutely vested in the widow under sec. 3653 - when it should not be.
  2. The admr. is charged with \$75, imaginary, wrongfully -
  3. " " " " \$300, " "
  4. " " " " \$350, which should be ✓
  5. " " " " 1234, wrongfully ✓
  6. " " " " Credited with all his disbursements as he should ✓
- W. G. Ely atty for admr &  
Elizabeth Surgenor.

This report is excepted to by David Surgenor, an infant, by his guardian ad litem because the Court fails to report the advancements which have been made by the decedent to his heirs; and because the Court fails to charge to said certain of said heirs advancements received by them.

L. F. Nyatt, g. a. c.  
for said David Surgenor.



H. Livesay et al.

vs. { Comr's Report.

Mariah Livesay et al.

Filed May 4<sup>th</sup> 1905,

Atty. Gen. Clerk.  
By M. E. Keady D.C.

Fee for this Report, \$72<sup>00</sup>/<sub>100</sub>



Dec. 11 1905



Received from W. Orr Orrer. 2 Notes  
against H. B. Porter & A. J. Butler, dated April 1, 1904  
for two hundred and twenty <sup>50</sup>/<sub>100</sub> Dollars.  
Each, due in 182 days from date respectively,  
with interest from date, now amounting to  
\$443.06 - which is applied to the following

debts: H. J. Maynor's acct.

\$54.34

R. R. P. Assn. of all Hyatt Chr.

252.13

Money Chewing distribut.

126.80

For Cris of return of acct. of adn.

10.06

\$443.06

Received by W. Orr Orrer



A. B. Livesay, et als,

Plaintiffs.

vs.

In Chancery

Mariah Livesay, et al,

Defendants.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court for  
Lee County, Virginia:

The undersigned commissioner in this cause respectfully reports, that recently he had turned over to R. L. Pennington the purchase money notes executed to him by Henry<sup>Y</sup> Baker for the land sold said Baker by your commissioner, which notes were for \$425.00 originally, and with interest thereon from the 1st day of April, 1904. The said R. L. Pennington received from your commissioner the said notes in payment of a small debt of \$52.50 decreed in favor of said R. L. Pennington in this cause as administrator of H. J. Morgan deceased, and in payment of a debt decreed in favor of Pennington Gap Bank in this cause for \$241.56 with interest; and also in payment of the distributive share of Nancy E. Livesay in the estate of S. S. Surgener, deceased, out of the funds remaining for general distribution after the payment of the debts, costs &c. being her 1/5 interest in said estate. <sup>+ \$10.06 Costs of said Settlement</sup> The said notes when turned over to the said Pennington amounted to the sum of \$ 443.06 *Mr. Pennington's receipt for said notes is herewith filed.*

Of the \$200.00 required to be paid in hand at the time your commissioner sold the tract, or ~~lot~~, of land to the said Baker, there remained in your commissioner's hand the sum of \$50.00 after payment of costs commissions &c., and this sum he paid over to Orr & Noel, Attorneys for the plaintiffs being their fee against the plaintiffs in this cause. A. R. Surgener administrator of S. S. Surgener, deceased, has gone on and settled with most of the heirs the amounts due them from the said administrator, and from the funds in your commissioner's hands, and he has filed his receipts before R. L. Pennington Commissioner of Accounts, and Mr. Pennington has made a settlement of the account of the said adminis-



trator on account of the amounts decreed against him in this cause  
in the hands  
at the last term, and also of the amount of myself as commissioner, and  
a report and settlement of these matters, by the said Pennington as  
commissioner, will be submitted to your Honor in this cause by said  
commissioner, and everything will there be shown properly as to what has  
been done. The decree at the last term directed the said administrator  
and your commissioner to act in concert in paying the debts decreed  
in  
against the said estate, and distributing the residue of the funds in  
our hands, and this we have done, and I have accounted for what was in  
my hands in the manner above stated. I suppose a deed might be made to  
Mr. Baker for the land purchased by him, reserving a vendor's lien  
therein to secure the payment of the said unpaid purchase money noted,  
and then this cause might be retired with leave to re-instate it for any  
necessary purpose.

  
Commissioner



A. B. Leuany et al.  
vs. Cour Dey's Report  
Mariah Leuany et al.

---

Filed Dec 9<sup>th</sup> 1906.

N. C. Fawing, Clerk.



To the Hon. H.A.W.Skeen, Judge of the Circuit Court for Lee County:

Your undersigned Commissioner of Accounts for Lee County, begs leave to report that on the 7th day of December, 1905, A.R. Surgner, Admr. of the estate of S.S.Surgner, deceased, offered to make settlement to your Commissioner of his account as Administrator of said estate, there being pending in the Circuit Court for Lee County a suit for the settlement of his administration account under the style of A.R.Livesay et al. vs. Mariah Livesay et al., your Commissioner deemed it proper to make said settlement and report as a part of said cause. Accordingly your Commissioner proceeded to charge said A.R.Surgner with the amount found to be in his hands as ascertained in said cause and shown by the report of A.L.Goins, Special Commissioner with interest thereon from December 15, 1905. By a former decree in said cause above mentioned the said Administrator and James W.Orr, Special Commissioner, who had heretofore sold the real estate of S.S.Surgner, deceased, were directed to act together in making proper disbursements to the parties entitled. A.R.Surgner produced receipts in full of the amount to which S.R.Surgner, A.B.Livesay, Almira Fletcher and Sarah Roberts are entitled to out of the estate, although such receipts did not actually cover in dollars and cents the amount to which they were entitled. Your Commissioner, nevertheless, gave him credit upon the administration account for all each of the said parties were entitled out of the said estate, except that Almira Fletcher and A.B.Livesay had been paid theretofore together the sum of \$50.00 by J.W.Orr, Commissioner, out of the sale of the real estate. In statement "A", it will be seen that said A.R.Surgner has paid out all that is in his hands for distribution, except the sum of \$126.80, which is going to David Surgner, the infant in this cause, and 39 cts, general balance to square. In making this settlement your commissioner did not take into consideration one charge to the said A.R.Surgner of \$150.00 provided to be paid to David Surgner in the deed of S.S.Surgner



to A.R.Surgner; \$150.00 provided for S.R.Surgner in said deed. These sums are to be settled outside of this settlement, except that the receipt of S.R.Surgner is sufficient to cover all amounts going to S.R.Surgner out of said estate.

In ascertaining the amount to which the distributees under the decree of court are entitled, your Commissioner took the aggregate of the amount in the hands of the Administrator and J.W.Orr, Comr. of From this sum your Commissioner deducted the amount debts due by the said estate, leaving \$1099.02 for distribution and payment of making this settlement and report and the clerk's fee for recording as will be seen by statement "B" herewith filed. It will be seen from said statement that the amount in the hands of the said Administrator was \$929.91, and the amount in the hands of J.W.Orr, Comr. is \$498.88, and the said statement showing the amount paid by said Administrator and to whom paid, and the amount paid by said J.W.Orr Comr., and to whom paid. Of the assets in the hands of Orr, Comr., \$442.06 thereof consists in two notes and interest thereon for \$425.00 principal, \$225.00 of which is due one year after date of said notes, which are dated April 1st, 1905, and the other two years after date, each drawing interest from the date thereof. These said two notes were assigned to R.L.Pennington in settlement of the following items:

\$54.34 due to the estate of H.J.Morgan, deceased: \$252.13 due to R.L.Pennington, assignee of A.G.Hyatt, cashier: \$126.80 to Nancy E.Livesay; \$10.06 on costs of this settlement; \$8.00 to R.L.Pennington, Commissioner and \$2.06 to H.C.T.Ewing, Clerk. Said notes as aforesaid were assigned to R.L.Pennington with the understanding that the purchaser should be made a deed for the tract of land purchased by him with the lien retained in said deed to secure the payment of said notes.

Respectfully submitted.

*R. L. Pennington Comr. of Dec.*



# Statement "A"

A. R. Sargent *Attor of S. S. Sargent Est.*  
*for act with said estate*

1905

May

15

To This sum due estate per  
 statement of A. M. Gains Comr.  
 " Int to Dec. 15, 1905

898 47

31 44

By This sum for S. R. Sargent, See  
 Recd of his - in full.

(1)

126 80

By This sum for A. B. Sargent for  
 decem - See recd to Adm as  
 Settled in full -

(2)

150 00

By This sum under General Dist-  
 to A. B. Sargent  $\frac{1}{2}$  of \$126.80 (- \$50.00  
 paid to Orr Mottley for same -)  
 See recd No 2. - to Adm.

38 40

By This sum for Alaura F. Sargent  
 under decem. See Recd to Adm  
 as Settled in full of all.

(3)

150 00

By This sum under General  
 distribution,  $\frac{1}{2}$  of \$126.80 (- \$50.00  
 paid to Orr Mottley for same)  
 See Recd No 3.

38 41

By This sum under decem to  
 Sarah Roberts. See Recd of  
 Adm. in full of acc.

(4)

150 00

By This sum for Sarah Roberts  
 under General Dist See  
 Recd No. 4

126 80

By Amt for for taxes.

5

251

" " " Sheriff fees

6

150

" This sum to be paid A. R. Sargent.

7

75 42

" Amt due David Sargent.

18 30

" " " To Sargent

126 80

32 92

929 91

929 91



Statement "B"

S. S. Surgeur Estate

1905		Assets	Liabilities
Dec	15	This Sum in Hands of A. R. Surgeur Adm. Airt to debt	
		This Sum in Hands of J. W. Orr, Comr	
		Including Bonds Notes	
		This Sum paid out by A. R. Surgeur - Per Statement No 1-	802 72
		This Sum left in Adm's Hands to pay David Surgeur on General Distribution	126 80
		This Sum due estate by Adm. See Statement No 1-	39
		This Sum Due W. W. Morgan Est.	
		as of Dec. 15, 1905	54.34
		This Sum due A. R. Surgeur Chs	
		as of Dec. 15, 1905	252.13
		This Sum to A. R. Surgeur	126.80
		This Sum " A. R. Surgeur, Fletcher	50.00
		" for Mrs. J. R. - Recording Costs	10.64
		Paid by J. W. Orr	493.88
			493.88

1905	Dec	15	Total Assets of Estate	1423 79	
			Total Primary Liabls. to be paid		324 77
			Balance to go to heirs & Distributors		1099 02
			This Sum for Distribution	1099 02	
			This Sum to be paid A. R. Surgeur		
			Preferred Distribution		150 00
			This Sum to be paid A. R. Surgeur, Fletcher		150 00
			This Sum to be paid Mrs. Roberts		150 00
			Balance for General Dist. Less Costs		649 02
			This Sum for General Distribution	649 02	
			Less Com. fee 8% @ 2.00		15 00
			This Sum 1/5 to A. R. Surgeur		126 80
			" " 1/5 " Mrs. Roberts		126 80
			" " 1/5 " A. R. Surgeur, Fletcher		126 81
			" " 1/5 " S. S. Surgeur		126 80
			" " 1/5 " David Surgeur		126 80



A. B. Lewis, the  
Report of the  
of Accounts

Marion Lewis, the

Filed Dec. 19, 1905

H. J. Ewing,  
Clerk.

Recorded in  
Fiduciary Settlement  
Book # 1, page 1004  
Examined June 23, 1906  
Audited

Chas. J. H. 800

Pennington Bros.  
ATTORNEYS AT LAW  
JONESVILLE AND PENNINGTON GARVA.



A. B. Livesay, et al,

Plaintiff~~s~~,

vs.

In Chancery

Mariah Livesay, et al,

Defendant~~s~~.

To the Hon. H. A. W. Skeen, Judge of the Circuit Court  
of Lee County, Virginia.

The undersigned commissioner in this cause respectfully reports that pursuant to the decree entered therein at the last term, he executed to H. T. Baker, the purchaser of the tract of seven or eight acres of land sold by him in this casue, a deed with covenants of special warranty for said real estate, reserving therein a vendor's lien to secure the balance of the unpaid purchase money, which deed is herewith filed, marked "Deed", for confirmation.

James H. Orr.  
Commissioner.



A. B. Leuasy et al.

vs  $\frac{1}{2}$  Cour Ours Report.  
 $\frac{1}{3}$  + Deeds.

Mariah Leuasy et al.

---

Filed Feb. 14<sup>th</sup> 1906.

H. E. Ewing,  
Clerk.



THIS DEED made this April 30", 1900 by and between S. S. Sur-  
gener and Elizabeth Surgener his wife parties of the first part and  
Callie Surgener the wife of A. R. Surger and the lawful heirs of said  
A. R. Surgener parties of the second part all of the County of Lee and  
State of Virginia. WITNESSETH, That for and in consideration of four  
hundred and twenty five dollars, three hundred of which is in hand  
paid and one hundred and twenty five being the residue to be paid  
twelve months from date and for the further consideration of the  
faithful good and complete maintainance of the said Elisabeth Surgener  
during her natural life, being a mutual agreement between said S. S.  
Surgener and Elisabeth his wife that the last consideration named  
shall be her entire interest in the real estate of the said S. S.  
Surgener. For the faithful performance of the above consideration a  
vendors lien is hereby retained on said lands by the parties of the  
first part. And the parties of the first part do hereby grant, bargain,  
sell and convey unto the parties of the second part all of a certain  
tract or parcel of land situated on Blackwater Creek in Lee County,  
Va. Bounded as follows to-wit: Beginning on a stake on the bank of  
the big ditch a conditional line made by S. S. Surgener and Henry  
Baker at the end of a wire fence, thence southwest with the wire fence  
to a planted rock near the barn, thence westwardly a straight line to  
a planted rock at the south corner of a field known as the Mat. field,  
thence westwardly a straight line to Thos. Anderson's line, thence N.  
W. with said line to the top of a ridge to an oak bush, thence North-  
wardly to a corner made by S. S. Surgener and James Livesay on top  
of a spur, thence with the high ground Northwardly to an oak corner  
made by S. S. Surgener and Henry Baker thence eastwardly down the ridge  
to a willow, thence down the branch to the wagon road thence with the  
lower side of said road to the corner of the plank fence and with the  
same to the beginning, containing fifty acres more or less.

To have and to hold said tract or parcel of land with all  
things pertaining thereunto unto the parties of the second part for-  
ever. The parties of the first part covenant that they will forever  
warrant and defend the title to said land hereby conveyed.



IN WITNESS whereof the parties of the first part have hereunto set their hands and seal, the day and date above written.

S. S. Surgener (Seal)  
her  
Elisabeth X Surgener (Seal)  
mark

Virginia, Lee County, to-wit:

I, W. A. Owens a Notary Public in and for Lee County Va. do hereby certify that S. S. Surgener and Elisabeth his wife whose names are signed to the foregoing deed bearing date April 30" 1900 each personally appeared before me in my County and State aforesaid, and acknowledged the same to be their own act and deed.

Given under my hand April 30" 1900.

W. A. Owens, N. P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court for said County the 20th day of May, 1901, this deed being properly stamped was presented and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, Clerk.

Deed Book No. 38, page 428.

A Copy.

Teste:

H. S. Ewing Clerk.



S. S. Surgener & wife  
Toll Deed

Callie Surgener

Copy

A.

10 A.  
Apr 30-1900  
1901

Clerk: O. V. S.



I, Stephen S. Surgener & Elizabeth Surgener, his wife, have this day bargained and sold and do by these presence transfer and convey unto A. R. Surgener a certain tract or parcel of land situated partly in Hancock County Tennessee and partly in Lee County, Va. for and in consideration of two hundred dollars \$200.00 for the payment of which note is this day executed due one year after my decease without interest also one hundred and fifty dollars to be paid to David Surgener heir of S. M. Surgener when said David Surgener is twenty-one years of age whole of consideration \$350.00 and I hereby reserve my right and possession during my natural life, Said land is bounded as follows, to-wit: Beginning on a stake east side of the barn thence southwardly with a plank fence to the Creek thence down the Creek as it meanders to opposite a Mulberry tree, (a corner tree, thence around with Brotherton line to the west side of the Pike road thence northwardly with the west side of said road to opposite a cherry tree, thence up hill by said tree to the top of the point, thence Northwardly to S. C. Surgener corner thence with a condiddtional line to the Beginning to have and to hold the same him his heirs forever. We further covenant with the said A. R. Surgener that we are lawfully siezed of said land and have a good right to convey the same, and that the same is unincumbered and we forever warrant and defend the title to the same against the lawfull claims of all persons whomsoever.

IN WITNESS whereof, I have hereunto set my hand and seal,  
this May 26th, 1904.

Stephen S. Surgener (Seal)  
her  
Elizabeth X Surgener  
mark.

Virginia, Lee County,

I J. W. McPherson a Justice of the Peace for the County aforesaid in the State of Virginia, do certify that Stephen S. Surgener & Elizabeth Surgener, his wife, whose names ~~is~~ signed to the writing



hereto annexed, bearing date May 26, 1904, have acknowledged the same before me in my County aforesaid.

Given under my hand and seal this, June 17, 1904.

J. W. McPherson, J. P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of Lee County, on this the 11th day of July, 1904. This deed was presented, and together with the certificate annexed, admitted to record.

Teste: M. E. Flanary, D. Clerk.

Deed Book No. 41, page 545.

A Copy. Teste: *W. T. Ewing* Clerk.



S.S. Surgenor & wife

Toll Deed

A. R. Surgenor.

---

---

Copy

B

May 26 - 1904

1862

Clerk's: \$0.60



THIS DEED made this the 17th day of October 1899 by and between S. S. Surgener, Elizabeth Surgeer of the first and Nancy E. Livsay of the second part all of the County of Lee and State of Virginia.

WITNESSETH that for and in consideration of the love and affection that We have for our Daughter Nancy E. (now Livsay) and for the further consideration of Nine Hundred dollars a portion of which is in hand paid, and a portion of which is yet to pay, as evidenced by notes executed this day of even date of this conveyance. We the said party of the first part doth sell convey and deliver all of a certain tract or parcel of land situated in the Counties of Lee and State of Va. and in the County of Hancock and State of Tenn, and in what is known as the Blackwater Country adjoining the lands of the party of the first part and others as follows to-wit: Beginning at the mouth of a branch South west of the barn that is now on the land, Thence up the south bank of said branch and with a fence to a walnut thence S. E. a strait line to a hickory on the top of a spur, on this line there is now a pump line that conveys water to the mansion house from a small spring some distance on the west side of this line which pump line and the Spring is conveyed in this deed, as a right of way to said water to hold and to have forever, also a right to fence the spring to protect the water and the timber that is now near the water, thence from the Hickory southwardly up the spur with the high ground to Bakers corner running with the high ground to Pridemores line a rock corner of Pridemores & Bakers, thence with Pridemores line eastward to Dingas line thence to Harris line or Dinges line to F. C. Anderson's line on the top of the ridge thence westward with a line of the old Roberts survey to the Howard line, thence with the Howard line to the Creek, thence down and with the meanderings of said creek to the Beginning supposed to be in the neighborhood of one hundred and fifty acres.

To hold the same in fee simple with all things pertaining thereto that is seen or unseen and We the said party of the first part will warrant generally the title herein convey to the said party of the second part to her, her heirs or assigns forever.



WITNESS our signatures and seal day and date above written.

S. S. Surgener (Seal)  
her  
Elizabeth X Surgener (Seal)  
mark

State of Va. Lee County,

I, John M. Tate a Notary Public of said County do certify that S. S. Surgener whose name appears signed as Vendor to the foregoing deed of Conveyance, personally appeared before me in my County and signed and acknowledged his signature to be genuine for the purposes set forth therein.

Given under my official signature in my County this the 17th day of Oct. 1899.

John M. Tate, N. P.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court for said County the 20th day of February, 1902. This deed was presented, and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, Clerk.

Deed Book No. 38 page 313.

A Copy. Teste H. T. Ewing, Clerk.



S. S. Surgenor & wife

Toll Deed

Nancy E. Sinsay.

~~underwritten~~

Copy

6.

Vol 17-1879

Clerk. B. O. C. S.



THIS DEED made this the 26th day of Nov. 1895 by and between S. S. Surgener and Elizabeth Surgener his wife of the first part and O. P. Levisay and Nancy E. Levisay of the second part all of the County of Lee and State of Virginia, WITNESSETH: That for and in consideration of the sume of Sixteen Hundred and fifty dollars nine hundred and nineteen dollars & ~~thirty~~--three cents in hand paid & seven hundred & thirty dollars & Sixtyseven cents for which a Vendor's lien is hereby retained we the said parties of the first part doath bargain sell and convey unto the said parties of the second part all of a certain tract or parcell of land situated in Lee County Virginia and in the County of Hancock & State of Tennessee on Blackwater about eight miles south of Jonesville and bounded as follows, to-wit: Beginning at a planted rock opisit the mouth of the big ditch on the East side of Blackwater Creek thence S. E. up the ridge a strait line to John Baker's line on top of the ridge and with the same Eastwardly to.-- Washington Pridemore's line and with his line Eastwardly to a hollow and with said Pridemores line to the top of a ridge to a marked oak thence Northwardly with said line to a marked chestnut corner on top of a ridge thence Eastwardly down the ridge to the branch thence with a fence to the A. I. Anderson line and with the same North to a Chestnut oak corner thence down the ridge to the back corner made by O. P. Levisays & James Dingus near a branch, thence with a conditional line made by said Levisay & Dingus Northwardly to A. R. Anderson old line on top of the ridge thence Westwardly with the top of the ridge to the old Howard line thence with said line to the fish trap spur and to S. R. Levisays line to the Creek and with the same Southwardly to the Beginning. To have and to hold the same with all things thereon and there under purtaining to said premises and we the said parties of the first part will warrant and forever defend the title to the above named premises to the said parties of the second part to them there heirs and assings forever. In witness whereof we have hereunto set our hands and seals the day and date first above written.

S. S. Surgener (Seal.)  
her  
Elizabeth X Surgener (Seal.)  
mark



State of Virginia, Lee County, to-wit:

I, Thos. McPherson, a acting Justice of the Peace in and for said County do certify that S. S. Surgener and Elizabeth Surgener the wife of S. S. Surgener personally appeared before me in my County and acknowledged there signatures to the foregoing deed of conveyance for the purposes therein mentioned and that they had willingly executed the same and that they had willingly executed the same and did not wish to retract it.

Given under my hand this Nov. the 29th 1895.

Thos. McPherson, J. P.

Virginia, Lee County, to-wit:

In the County Clerk's Office of Lee County, on this the 6th day of August, 1904. This deed was presented, and together with the certificate of acknowledgment thereto annexed, admitted to record.

Teste: H. C. T. Ewing, Clerk.

Deed Book 41, page 581.

A Copy. Teste: H. C. T. Ewing, Clerk.



S. S. Surges *uife*

To// Deed -

C. P. Lewisay *uife*

Copy.

Clerk: 50



S. S. Surgener & wife  
Toff Deed  
O. P. Skirsay & wife

---

Copy

D.

1650 -  
Clerk: Co



THIS INDENTURE made this 10 day of October 1903, by and between S. S. Surgener of the County of Lee and State of Virginia of the one part and Mariah Livesay wife of M. D. Livesay of the County of Hancock and State of Tennessee of the other part: Witnesseth that I, said S. S. Surgener for and in consideration of the love and affection I have for my daughter the said Mariah Livesay do hereby grant convey and make title in fee simple to the said Mariah Livesay to the following described tract piece or parcel of land to-wit: Beginning on H. T. Bakers southwest corner in the middle of the creek thence Northwardly with the line between said Baker and said S. S. Surgener to a stake on Collin line to a wire fence thence with said wire fence westwardly to opposite the old shade tree near the center of the bottom so as to make the line along the wire fence the same distance from Bakers line that it is on a line at right angle from Bakers line to said old shade tree southwardly to the stump of the old shade tree thence with the old turn row between the two meadows to a stake in the middle of Blackwater Creek, thence up said Creek along the middle of the same to the Beginning, supposed to be about seven acres be the same more or less.

To have and to hold the same to the said Mariah Livesay her heirs and assigns forever in fee simple, this being in full satisfaction of the part or portion of the said Mariah Livesay in the estate of the said S. S. Surgener. And the said S. S. Surgener covenants and agrees to and with the said Mariah Livesay that he is lawfully seized of said land and has a good right to convey the same and that the same is unencumbered and that he warrants the title to said piece of land against the lawful title claim and demand of all persons whomsoever either in law or equity.

IN WITNESS whereof the said S. S. Surgener has hereunto set his hand and seal, but it is expressly understood and agreed that said S. S. Surgener is to retain the possession and have the use and occupation of said land with all rents or profits arising therefrom during his natural life time. This the day and year first herein written.

witnesses: Henderson Nichols.

S. S. Surgner

(Seal)



Jacob B. Johnson.

Virginia, Lee County, to-wit:

I, B. M. Morgan, Clerk of the County Court for the County of Lee in the State of Virginia, do certify that Henderson Nichols and Jacob B. Johnson whose names are signed as witnesses to the above deed this day personally appeared before me in my office, in the County aforesaid and made oath that S. S. Surgener whose name is signed to the foregoing deed bearing date the 10th day of October 1903, signed the same in their presence and acknowledged the same before them in said County; and that they signed the same as witnesses at his request. Given under my hand this 19th day of January, 1904.

B. M. Morgan, Clerk.

Virginia, Lee County, to-wit:

In the Office of the Clerk of the County Court for said County, the 19th day of January 1904. This deed was presented, and together with the certificate thereto annexed, admitted to record.

Teste: B. M. Morgan, Clerk.

Deed Book No. 41, page 148.

A Copy. Teste: W. H. Ewing, Clerk.



S. S. Surgeon  
Toll Deed

Mariah Livesay

Clerk: \$1.75

E

Copy.



To R. L. Purington com. of act. for  
The county the undersigned  
administrator of the estate  
of S. S. Engeman deceased

Reports that on the 3<sup>rd</sup> day of  
Dec 1904 he made the following  
Sale of the Personal Property  
of said deceased

cash To Elisha Emery \$52.84

Trunk To Elizabeth Engeman 3.50

carder mill To Mr. Stidam 1.56

Table To Ernst Blessing 50

Small Tables To Elizabeth Engeman 125

Big Plow To Fyler Engeman 85

~~Undergarments to Mrs. Engeman 10.00~~

~~Washstand to Mrs. Engeman 10.00~~

\$ 3.10 50  
\$ 60.50

A. R. Engeman administrator



Sal. Bill  
of J. S. Luzzatto

"

"a"



Feb. 18<sup>th</sup>

1905



Received from A. R. Senger adm of  
S. S. Senger Dec, Eighty two

79  
100

Dollars.

full amt of store acct, due me by S. S. Senger dec. at  
time of his death.

\$ 82 79

S. C. Senger & Co



B B Sargum apc Due To

1903

B. C. Sargum, Y. C. O

March 10

cr earn 1 1/2 Baskets

75-

" 10 Sardines

8

" 12 Knife Hat 200

250

" 13 Solus

15-

" 13 cr earn

30

" 17 Sardines

8

" 19 cr earn

105-

19 Paid Brother Lima Preacher

100

April 5 " Paid Geo Pridemore

50

" 5 cr earn

53-

6 Paid George Pridemore

10

6 cr earn by C P. Linsay

50

8 cr earn

64

13 Paid Mr. Ansburn

50

13 Leather

53-

13 Paid Geo Pridemore

65-

15 " " " 105-

17 " Mail Boy Geo Pridemore

20

18 " Elie Nichols

40

18 " Geo Pridemore

10

20 cr earn

25-

21 Paid Geo Pridemore

25-

404

26 Goods

110

30 Rob by Geo Pridemore

10

May 4 Paid Geo Pridemore

30

11 " " " 20

11 Paid 225- 170  
Pants fine shirts 4 set

375-

11 Underwear Shirts 85- 145-

230

20 211 Shirts Paid Geo Pridemore

70

forward

16.76



	forward	16	76	cr
1903	cr forward			4.04
May 23	Black	1	7	
" 29	Medicine from Rogersville	7	5	
June 11	cotton 40 the 10	3	0	
12	The <sup>10</sup> Paid Dan Linsay <sup>50</sup>	6	0	
15	Medicine 5 <sup>10</sup> Vanilla	1	5	
June 27	Chuck	20	00	
July 1	Paid W.P. Country for work	2	00	
2	to Bal on Chuck	6	00	
12	Paid child Mower	3	5	
22	Paid chut <sup>20</sup> " candy <sup>10</sup>	3	0	
Sept 9	Paid Daisy Linsay	3	0	
14	" A.F. Baker	1	50	
Oct 5	for Pair Shoes	2	00	
5	2 <sup>Health</sup> shirts medicine	3	50	
5	London		5	
16	Bal on The Chut <sup>Note</sup> Wygal	12	50	
Nov 14	<sup>20</sup> Plaster <sup>15</sup> London <sup>5</sup> Mail Bag	3	0	
15	Mutton of Lonsan	2	50	
Dec 1	Oranges	1	70	
<sup>1904</sup> Feb 8	Shirts	2	00	
June 15	oranges from Rogersville	2	00	
23	Shirt-	1	00	
29	cash	3	00	
July 4	<sup>medicine</sup> Ship & Shirt-	1	00	
4	Suspenders & Shirts	1	55	
4	cash to Dr Stone	3	00	
4	gloves hat & tie	1	35	
	Store apc	8	683	
Aug 31	Paid for Tomb Stones	2	500	
July 6	" " cash	5	500	
Dec 1	Paid for Piling & Sheding	1	200	
	grove	\$1.7883		



Virginia Lee County to wit,  
This day personally appeared before me  
S.C. Surgeon and made oath in  
due form of law that the above acct  
of \$~~1747.79~~ less the within named is  
is just and unpaid. L.S. Bridemon  
also state on oath that he personally  
knows said account to be just and  
unpaid This Feb the 13<sup>th</sup> 1905

S. C. Surgeon - J.C.O.  
L. S. Bridemon

Sworn to before me, this Feb. 13<sup>th</sup> 1905.  
W.D. Owens N.P.  
My Commission expires April 15<sup>th</sup> 1908.

The foregoing account is excepted to because not  
properly sworn, Ex parte affidavits are not admissible  
when <sup>an</sup> account <sup>of debts</sup> is pending before a Commissioner.  
April 1905. Omt & Veal, for Plffs.

And the items for tomb stones, and <sup>in</sup> placing & cover-  
ing grave are further excepted to because not  
such expenses as the Schur could legally pay.  
April 1905. Omt & Veal, for Plffs.

(  
\$ 86.83  
4.04  
\$ 82.79 = See receipt  
)



S. S. Surgenor,  
with Sect.  
S. C. Surgenor & Co.

S. C. Surgenor & Co  
vs. { acct. \$174<sup>79</sup>  
A. R. Surgenor admr

Not allowed - not  
properly proven - S. C.  
Surgenor & G. S. Pridmore  
were the members of  
the firm of S. C. Surgenor  
& Co. Further the claim  
being rescinded and the  
case being before the Court  
at the time ~~that~~ the work  
should have been proved  
before the Court.

A. M. Goring  
Cmr.





Feb. 10<sup>th</sup> 1905-

Received from A. R. Surgen, admr of  
S. B. Surgen & Co., One hundred ——— Dollars.

and due me for services & labor rendered for S. B. Surgen  
during his sickness.

\$100<sup>00</sup>

S. B. Surgen



Estate of S.S. Surgenen decd  
To Callie Surgenen                      On  
for taking care of and waiting on said  
S.S. Surgen during his sickness \$100<sup>00</sup>

Virginia Lee County to wit.  
This day personally appeared before me  
W. A. Owens a Notary Public. for Lee County.  
The above named Callie Surgenen and  
made oath in due form of law that the  
above Service was rendered by her  
Also H. C. Wygal States on oath that  
he personally knows that said Callie  
Surgenen rendered the Service above  
mentioned J. C. Surgenen.  
Witness H. C. Wygal

Sworn to before me this Jan. 28<sup>th</sup> 1904  
W. A. Owens N.P.  
my term of office expires Apr. 10<sup>th</sup> 1908.



Estate of S. S. Surgen  
To 1/2 Account  
Callie Surgen \$1000

Not allowed  
A. M. Lewis  
Comrs





S. C. SURGENER & CO.,

Dealer in

Wilbur's Stock Food,  
and Farm Remedies

Betha, Tenn.,

Virginia Lee County to wit:

This day personally appeared before me, Elizabeth  
Surgenor and Callie Surgenor and made oath in  
due form of law, that S. S. Surgenor ~~did~~ died  
during his life time gave to his wife Elizabeth  
Surgenor, one note <sup>or due bill</sup> of \$500.00 due Apr 22<sup>nd</sup> 1904,  
and said note being executed by H. J. Boker and being  
part purchase of land sold by said S. S. Surgenor to  
said Boker. Said Elizabeth Surgenor also states that she  
is fully entitled to said note and has full right to collect  
the same in her own name

at Elizabeth <sup>his</sup> + Surgenor.  
S. C. Surgenor.

Sever to before me, this Sept. 6<sup>th</sup> 1904  
W. D. Owens N.P.



Elizabeth + Callie

Sungman

To { Affidavit

"Bill"

This paper is expected to  
as in duplicate for  
dupl. purpose.

1905  
Ans. bel. Dr. P. H. W.

1204 9 6  
1704 4 22

4-1 4

4 7/3d

5000  
06

12/30.000/25-

64

60

100

12

112

25-

112

300

5000

112

388



We The appraisers appointed  
 at the circuit court held  
 in Lee County Virginia on  
 the 5 day of Nov 1904  
 To appraise the goods and chattels  
 of S. S. Surgen, deceased.  
 Met. And was duly sworn.  
 appraised The following goods  
 and chattels.

This the 28 day November 1904

To Witte

Two hundred dollars Due the Estate  
 as Deed Shoes made by S. S. Surgen and wife  
 against A. R. Surgen \$200.00

a Note of fifty dollars on William E. Feivesay  
 Executed April the 18 day 1887 \$50.00

Note on W. A. Jones and J. H. Redman \$100.00

Subject To or to \$95.00 March the 5 1887 and also \$12.00  
 April the 4 1888

~~1 Pair Saddle & bridle~~ - - - \$5.00

1 Tank 3.50

1 Iron Phon 3.00

2 Small Tubs 2.00

1 Wash stand .25

1 Wash Kettle 1.00

1 Sider Mill 2.00

1 Irons Bill 1.00

100 Bushels corn 50.00

Total

R. G. Livesay

J. L. Glass

John. McPherson

417.75  
 412.75



175	
30	
4	2.50
1200	
3050	
25.00	0
25.00	0

'B'





Feb. 18<sup>th</sup>.

1905-

Received from A. H. Sargent and  
S. S. Sargent - Fifty ~~00~~ Dollars.

to be credited on my interest in the estate of my  
father, if it is found that I am entitled to any  
amount.

\$50.00

Sarah Roberts



Found  
sign

"R."



Received of A. R. Surgeur the  
sum of \$25<sup>00</sup>, in full of tax and  
Clerk's fee, <sup>\$1.50</sup> on the Administration  
of the personal estate of S. S. Surge-  
ur, deceased. This day 20<sup>th</sup> / 1905.  
H. C. Ewing, Clerk.



Don. 1"



For \$8

1904

Received from A. R. Senguen adms  
are

Dollars

for services of appraiser <sup>100</sup> S. S. Senguen estate

\$1<sup>00</sup>

L. L. Glass



Vouch.

"2"



Nov 28

1904

Received from: A. R. Engen, cash  
one

Dollars

100

an officer of S. S. Engen, Second State

\$1<sup>00</sup>

J. H. W. Pearson







Paid Wm. Hickam fifty  
cents for Hack going after  
coffin for S. S. Singer, Dec.  
This Jan 13 1904

W. M. Hickam



Touch

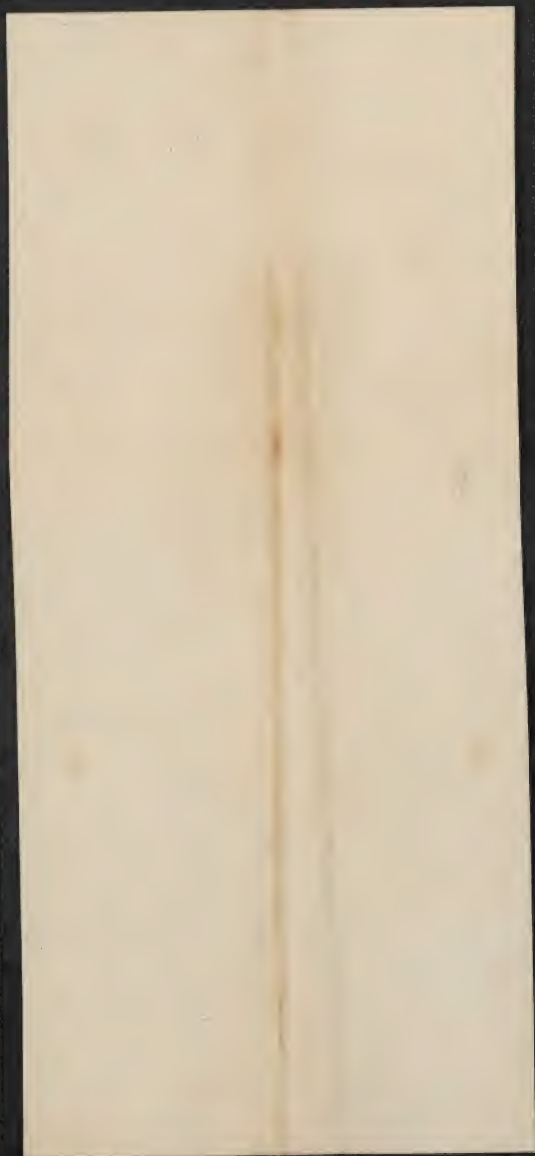
"4"



\$1<sup>00</sup> Dec 3 1904

Received of A. R. Sengren, admr  
One Dollar as crying the  
Sale at S. S. Sengren's deceased  
S. H. Livesay.







Rogersville, Tenn., Aug 31 1904 No.

# Hawkins County Bank



Pay to the  
order of

G. W. Mangrum

\$ 25<sup>00</sup>/<sub>100</sub>

Twenty five

DOLLARS

FOR

Monuments

S. C. Mangrum & Co



Elv. Marynare



Rogersville, Tenn. July 6 1904 No.

# Hawkins County Bank



Pay to the  
order of

W. S. Crowell

\$ 55.00

Fifty five

DOLLARS

FOR 1 coffin

S. C. Ingemann & Co



W. B. Brownell

NATIONAL EXCHANGE BANK,  
LYNCHBURG, VA.  
POWELL'S VALLEY BANK,  
JONESVILLE, VA.  
C. B. COOK, Cashier

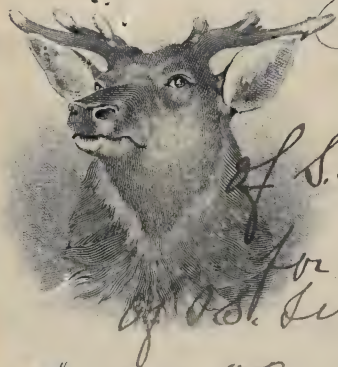
ENDORSEMENTS GUARANTEED  
PAY ANY BANK OR BANKER  
Commercial Bank of Lynchburg, Va.

Pay to the order of  
Previous Endorsements Guaranteed  
FIRST NATIONAL BANK  
JUL 11 1904  
Cashier

ALL FROM ENDORSEMENTS GUARANTEED  
PAY TO THE ORDER OF  
ANY BANK OR BANKER  
JUL 11 1904  
C. B. COOK, Cashier

PAY TO THE ORDER OF  
ANY BANK OR BANKER,  
All Previous Endorsements Guaranteed.  
JUL 8 - 1904  
National Exchange Bank,  
LYNCHBURG, VA.  
JAS. T. BOWMAN, CASHIER.





Feb. 18<sup>th</sup>

1903-

Received from A. M. Surgenor admr

of S. S. Surgenor dec. Ninety Two - 100 Dollars.

for Corset, tombstones and all funeral expenses & Paid by on & carrying g  
of S. S. Surgenor dec.

\$ 92 <sup>00</sup>/<sub>100</sub>

J. C. Surgenor & Co



Touch

"6"



Mr. P. S. Berger

B 26  
Jonesville Dist. No. 3.

To E. S. FLANARY, Treasurer Lee County, Virginia, Dr.

No. <u>23</u> - No. <u>L 13</u> 1903	S Tax 20 & 25	St'e sch'l tax	Pensions	Co. Levy 35	Road Tax 30	Co. sch'l tax	Dis Schl tax	TOTAL AMT
Val.	cts. on \$100	10 cts on \$100	5 cts on \$100	cts. on \$100	cts. on \$100	10 cts on \$100	10 cts on \$100	OF TAXES.
Head Tax	\$1 50							\$1 50
Per. Prop.	220 . 44	22	11	77	66	22	22	264
Bonds, Notes &c								
No. <u>1</u> Tracts <u>40</u> Acres	360 72	36	18	126	108	36	36	432
Lots								
TOTAL	580 266	58	29	203	174	58	58	446
5 per cent pen'ty								22
								8.89

Received Payment, E. S. McShannon, D. Treas.



On by check #227

May 2nd 1904

\$8.89

2.12

---

\$6.77

= 7"

Book



1905.

April 22. A.R. Surgeon admn. of S.S. Surgeon Sec. to M. G. Ely Dr.

To services in resisting motion to probate of will, \$5.<sup>00</sup>

" " motion having admn. appointed officers etc. 5.<sup>00</sup>

" " in attempt to collect Liversay note, 5.<sup>00</sup>

" " in Chancery suit now pending in representing the estate admn. for the estate. 25.<sup>00</sup>

" " other legal advice and services till estate is completely wound up -

10.<sup>00</sup>

\$50.<sup>00</sup>

Sworn to before me, this April 22-1905.

by M. G. Ely atty. H. C. J. Oslyn J.P.

Sworn to before me by M. G. Ely

This April 22, 1905.

H. C. J. Oslyn J.P.

\$50.<sup>00</sup>

Jonesville Va. April 22-1905.

Received of A.R. Surgeon admn. of S.S. Surgeon Sec. Fifty dollars, the amt of the above account,

M. G. Ely atty



Not allowed  
against estate;  
except as to first  
three items of \$15.00 -  
other not considered  
proper charges,  
at M. Gains,  
Counr.

Trench  
"8"

as to \$15.

M. G. Gains atty  
No. 111 Trench. & M. Gains. \$15.00  
A. R. Gains atty  

---



\$100.00

By the 1<sup>st</sup> day of March 1896 I promise  
to pay S. S. Surginer one hundred dollars  
for land for value received of him  
and I hereby waive the homestead law  
as to this debt as witness my hand and  
seal this Nov the 29<sup>th</sup> 1895



Settle,  
A. M. Gains,  
Comm.

O. W. Gevisay  
to { Note \$100.00  
}

or the within  
note \$25.00 Nov  
the 29<sup>th</sup> 1895

to \$25.00

or the within \$50.00  
~~for the within~~

~~for the within~~  
~~for the within~~  
~~for the within~~



\$630.67

one day after date I promise to pay  
S. S. Surginer six hundred thirty dollars  
& sixty seven cents for land for value  
received of him and I hereby waive the  
home stead law as to this debt as  
witness my hand and seal this Nov  
the 29<sup>th</sup> 1895

O. P. Lindegar

100  
203  
203  
203



Settle

A. M. Gains  
Comr.

---

C. P. Garrison  
To { Natl  
Hb 30. 67



\$125<sup>00</sup>

Twelve months after date I bind myself  
here + I to pay to the Order of S. S. Langeren  
One hundred and twenty five dollars for value  
received (being residue of purchase money for land)  
for which a vendors lien is retained on said land  
for faithful payment of same, waiving all Exem-  
tion laws. Given under my hand and Seal  
This 30<sup>th</sup> Dec 1900

Callie Langeren Seal



Callie Surgen  
 To } note \$1250  
 S.S. Surgen

---

5625  
 6463

11088

or the Withers  
 Note 5625  
 This goes 10-17-01

Note

or The Withers  
 Note 2750  
 - 106-17901

12

11088

1417

Sept 27-01  
 or by 3771  
 2718



\$30<sup>00</sup>/<sub>11</sub>

By the first Day of March  
1864, I Bind my self to pay A. E  
Lindsay thirty Dollars for Value  
Received of her and hereby Waive  
all homestead Laws as to  
this Debt Oct 19 1903  
S. S. Surges Seal



Filed by Mrs. Nancy  
E. Levesay as a debt  
against S.S. Surgen's  
estate. This Mar. 27<sup>th</sup> 1905

A. M. Goris,  
Clerk,

---

This note with-  
drawn -  
=



\$100

One day after date we O. Lewis, & Mary E. Lewis,  
his wife, and S. S. Sarguer do bind ourselves jointly &  
severally to pay Henry J. Morgan Four Hundred Dollars  
in value Received we waive the benefit of our  
homestead exemptions as to this debt.

Witness our hands & seals this 10<sup>th</sup> day May, 1900

(Red.)

(Stamps)

O. P. Lewis Seals

Mary E. Lewis Seals

S. S. Sarguer Seals

Credit-	Oct	10	1900	by	8	00	Int from May 10 to Sept 10. 1900
"	Jan	21	1901	"	5	00	" " Sept 10 <sup>th</sup> to Jan 10. 1901
"	May	15	1901	"	8	00	" " Jan 10 <sup>th</sup> to May 10. 1901
"	Sept	30	1901	By	8	00	" " May 10 <sup>th</sup> to Sept 10. 1901
"	Nov	12	1902	"	12	00	" " Sept 10 <sup>th</sup> to Nov 10. 1902
"	Aug	7	1902	"	8	00	" " Nov 10 <sup>th</sup> to Aug 10. 1902
"	Dec	11	1902	"	8	00	" " Aug 10 <sup>th</sup> to Dec 10. 1902
"	June	16	1903	"	12	00	" " Dec 10. 1902 to May 10. 1903
"	Dec	1	1903	"	16	00	" " May 10. 1903 to Jan 10. 1904, 8 <sup>th</sup> mo.
"	July	7	1904	"	12	00	" " Jan 10. 1904 to July 10. 1904







Powell's Valley Bank  
Pennington Gap, Virginia  
Jonesville, Va.

\$241 <sup>57</sup>

Pennington Gap  
JONESVILLE, VA.,

April 1<sup>st</sup>

1904

Twelve months

days after date

we

promise to pay to the order of

A.G. Hyatt Cas Pennington Gap Bank

Two Hundred Forty One & <sup>57</sup>/<sub>100</sub>

Dollars.

Negotiable and payable, without offset, at ~~Pennington Gap~~ POWELL'S VALLEY BANK, ~~Pennington Gap~~ Jonesville, Va., for value received,  
and ~~we~~ waive the benefit of ~~our~~ homestead exemption <sup>and all other laws</sup> to the debt evidenced by this note.

~~Given under~~ ~~hand~~ ~~the date above written.~~

The undersigned, principals and endorsers, sureties and guarantors, hereby waive presentment for payment, demand, protest and notice of protest or nonpayment of this note and diligence in bringing suit against any party hereto, and agree that time of payment may be extended without notice or ~~other~~ consent and without affecting their liability, ~~and agree that if suit is brought hereon, or if placed in the hands of an attorney for collection, to pay ten per cent. attorney's fee, which shall be added to and become a part of the judgment.~~

Given under our hands ~~date~~ <sup>and</sup> above written,

George H. Blankenship  
S.B. Surgenor surety

Due

April 1<sup>st</sup>

1905-



We, as endorsers of this note, waive demand, notice, protest, all exemption laws, and guarantee payment of same, and acknowledge that we sign with a full understanding of this endorsement.

A Copy

R. M. Lewis,

Corn



A. B. Levisay et al

vs { In Chy

Mariah Levisay et al

Exhibits.

A. M. GOINS,  
ATTORNEY AT LAW,  
JONESVILLE, VIRGINIA.



U. R. Sargent  
Agent of  
S. S. Sargent & Co.

Vouchers &  
Collections







		A. R. Sargues Allen S. S. Sargues			
		In acct with said Estate.			
1405	May 15	To Bal due for A. M. Gains Cur Rep.	898 47		
		" Amt to Dec 15, 1905	31 44		
		By Amt paid S. S. Sargues -	299 1		12680
		" " " ATZ Lewis & Co			15000
		" " " Alena Fitch			15000
		" " " Alphonse & Alphonse Bal-			7888
		" " " Sarah Roberts.			15000
		" " " "			12680
		" " Due Davis Sargues			98001
		were due to A. R. Sargues on his debt			12681
		By amt paid for taxes			90000
		" " " " Sheriff fees -			251
					150
					91123
					1868



Nov 11

1905

Received from H. R. Sengman - administrator  
for the estate of S. S. Sengman deceased  
One hundred and fifty five Dollars

in full of my part in the real and personal estate of  
S. S. Sengman deceased

\$ 155.00

S R Sengman



127.80

(11)



Received of A.R. Engeman, administrator  
for S.B. Engeman, deceased one hundred  
and fifty Dollars in full of of  
my Part in the Real and Personal Property  
in said estate This Aug. 28-1908-

W. B. Guesey



-2-



\$150<sup>00</sup>

Received of A.R. Senger administrator  
for S. S. Senger deceased One  
Hundred and fifty Dollars in  
full of my Part in the Real  
and Personal estate of S. S. Senger  
and all claims in Judgements  
at this Date This Aug 29 - 1908 -

Amira Fletcher



- 3 -



1  
\$150 <sup>00</sup>/<sub>11</sub>

Received of A.R. Ingerson administrator of the  
estate of S.B. Ingerson One hundred & fifty Dollars  
in full of my entire interest in the Real  
and Personal estate of S.B. Ingerson deceased  
and all claims in suit and judgments  
This Sept-6-1905 Sarah Roberts



if  
$$\begin{array}{r} \$898.47 \\ 370.06 \\ \hline 528.41 \end{array}$$

$$\begin{array}{r} 214.75 \\ 155.31 \\ \hline \cancel{\$370.06} \end{array}$$



257



No



of

Lonesville, Va.,

Dec 7

1905

P. R. Surgenor

Land and

\$5.00

Dollars

Bill and property tax of  
P. R. Surgenor for yrs. 1904.

E. S. W. V. Landon

L.

Treasurer of Lee County



5

1 - 11



April 5

1905

Received from A. R. Senger administrator  
for S. S. Senger decedent

One

and

$\frac{50}{100}$

Dollars

for scanning notices and appraisers

\$

1  $\frac{50}{100}$

L. J. McPherson, D. C.



6



Commonwealth of Virginia,

To the Sheriff of the County of Lee; Greeting:

WE COMMAND YOU, That of the goods and chattels of A. R. Surgenor,  
Admr. of the estate of S. S. Surgenor, Decd.  
in your bailiwick, you cause to be made (\$243.48) Two hundred +  
forty-three dollars and forty-eight-cents, with interest  
on \$241.56, part thereof  
with interest at the rate of six per centum per annum, from the 15 day of May,  
1905 until paid, which A. G. Hyatt, Cashier,

late in our Circuit Court of the County of Lee, haS recovered against the said  
A. R. Surgenor Admr &c., as well for a debt as interest  
thereon; also (\$1.33) One dollars and thirty-  
three cents, which to the said A. R. Hyatt, Cashier in the same  
court were adjudged for his costs by him about his suit in that behalf  
expended, whereof the said A. R. Surgenor Admr &c. is  
convict as appears to us of record. And how you shall have executed this writ make  
known at the rules to be holden in the clerk's office of our said Circuit Court  
on the 1<sup>st</sup> Monday in Nov. next. And have then there this writ.

Witness, H. C. T. Ewing, Clerk of our said court, at the court-house, this 23  
day of August 1905, and in the 130" year of the Common-  
wealth.

H. C. T. Ewing, Clerk.

Clerk \$1.33



---

E. B. No. 4 p. 196

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A. G. Hyatt, Cashier.

vs. }

FI. FA

IN DEBT.

A. R. Suggener Admr.

..... p. q.

---

Come to hand Aug 28

1905 at ..... o'clock ..... M

---

To 1st Nov. Rules, 1905 -

Lee Circuit Court,

Judg. May Term, 1905 -

O. B. No. 8 p. 60

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Clerk \$1.33

Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That of the goods and chattels of A. R. Surgenor,  
Admr. of the estate of S. S. Surgenor, Dec'd.  
in your bailiwick, you cause to be made (\$52.50) Fifty-two dol-  
lars and fifty-cents;  
with interest at the rate of six per centum per annum, from the 15 day of May,  
1905 until paid, which R. L. Pennington, Admr. of the es-  
tate of N. J. Morgan, Dec'd.  
late in our Circuit Court of the County of Lee, has recovered against the said  
A. R. Surgenor, Admr. &c., as well for a debt as interest  
thereon; also (\$1.33) One dollars and thirty-  
three cents, which to the said R. L. Pennington, Admr. &c. in the same  
court were adjudged for his costs by him about his suit in that behalf  
expended, whereof the said A. R. Surgenor Admr. of the estate of  
S. S. Surgenor, Dec'd is  
convicted as appears to us of record. And how you shall have executed this writ make  
known at the rules to be holden in the clerk's office of our said Circuit Court  
on the 1st Monday in Nov. next. And have then there this writ.

Witness, H. C. T. Ewing, Clerk of our said court, at the court-house, this 23  
day of August - 1905, and in the 130th year of the Common-  
wealth.

H. C. T. Ewing, Clerk.



---

E. B. No. 4 p. 194

---

*R. L. Puccington* <sup>cc</sup> *Adm'r*

VS. }

FI. FA

IN DEBT. <sup>cc</sup>

*A. R. Surgenor* *Adm'r*

p. q.

---

Come to hand

190..... at ..... o'clock ..... M

---

To 1<sup>st</sup> Nov. Rules, 1902,

Lee Circuit Court,

Judg. May Term, 1902

O. B. No. 8 p. 59

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I Stephen S. Surgeon of the County of Lee and State of Virginia aged seventy two years, being of sound mind and memory, and knowing the uncertainty of mortal life and the certainty of death, do hereby make ordain and declare this my last will and testament hereby revoking all other wills by me at any other time heretofore made-

1<sup>st</sup> I will that all my just debts and liabilities be paid together with my funeral expenses out of the estate that I may be possessed of.

2<sup>nd</sup> I will and bequeath unto my son S. R. Surgeon seven hundred dollars \$700<sup>00</sup> of which amount five hundred dollars \$500<sup>00</sup> has been paid to him by me. The other Two hundred dollars 200<sup>00</sup> to be paid out of the remaining part of my estate-

3<sup>rd</sup> I will and bequeath unto my son A. R. Surgeon a certain tract or parcel of land lying in the State



Virginia including the home - fully  
described in a deed of conveyance  
from myself to S. C. Surgenor his  
wife for the benefit of the said  
A. R. Surgenor and his heirs.

I also will and bequeath to my son  
A. R. Surgenor a certain parcel of  
land lying in the State of Tennessee  
and the State of Virginia - bounded  
as follows - beginning on a stake  
at the east end of the barren  
running southwardly with a plank  
fence to Blackwater creek, thence down  
the creek as it meanders opposite a  
mulberry tree, a corner tree between  
J. M. Brotherton and myself; thence  
with Brotherton's line to a rock on  
the west side of the wagon road -  
thence with the west side of said  
wagon road to opposite a cherry tree  
on the point; thence up the hill by  
said cherry tree to the top of the point -  
thence across northwardly to S. C.  
Surgenor corner thence with a



conditional line made between S. C.  
 Surgenor and myself to the beginning  
 containing seven or eight acres -  
 Now the said A. R. Surgenor is to pay  
 or cause to be paid the sum of  
 Three Hundred and fifty \$350 of which  
 amount one hundred and fifty dollars  
 is to be paid to the heir of S. M.  
 Surgenor whose name is David Surgenor  
 when is twenty one years of age  
 Now if the said David Surgenor dies  
 before he reaches that age, then the  
 one hundred and fifty dollars is to  
 fall back to the lawful heirs -  
 The other two hundred dollars is to  
 be paid the executor of this will with  
 in one year after my death, and  
 further the said S. R. Surgenor is to  
 provide amply for sustenance  
 clothing and comfort of my beloved  
 wife and his mother Elizabeth Surgenor  
 during her natural life and with all  
 necessary funeral and burial expenses.  
 4<sup>th</sup> I will and bequeath unto my



daughter Mariak Linsay a certain parcel of land lying in the state of Virginia and adjoining the land of Henry Baker bounded as follows:

beginning on a post on the bank of a ditch between myself and H. K. Baker; thence with a conditional line between Baker and myself and with a plank fence southwardly to the creek; thence down the creek to opposite a turn row between the meadow and corn; thence a straight line with the said turn row to a wine fence of S. C. Surgeon; thence with the said wine fence to the beginning which land is leased to the said Mariak Linsay 5<sup>th</sup> I will and bequeath to my daughter Nancy C. Linsay a certain parcel of land situated in the state of Virginia to wit; beginning on a weeping willow on the east side of the house; thence northwesterly toward the creek to the fish trap spur; thence up the spur to Richard Linsay line; thence



westwardly down the hill to the creek,  
thence down the creek to the mouth  
of a branch; thence up the branch  
to the beginning - supposed to be about  
5 acres - which land is bequeathed to her  
6<sup>th</sup> I will and bequeath to Sarah  
Robert my daughter two hundred  
dollars \$200<sup>00</sup>

7. I will and bequeath unto my two  
grand children Anderson Lindsey and  
Maryna Fletcher one hundred and  
fifty dollars each.

8. I further will and bequeath that  
all I die seized or possessed of  
if there be any after all has been  
just mentioned in the foregoing that  
it shall be sold and equally  
distributed among all my lawful  
heirs.

9<sup>th</sup> I also set aside one hundred  
dollars for the equipment of our  
Graves.

10 I hereby appoint my son S. R.  
Surgeon executor of this my last



Will and Testament and direct that  
they shall not be required to enter  
into any bond or security to perform  
the said execution but simply to be  
sworn and enter upon the duties of  
an executor

in witness whereof I Stephen S. Surgeon  
have hereunto set my hand and affixed  
my seal - This 26<sup>th</sup> Day of May 1904

Stephen S. Surgeon (Seal)

Signed Sealed and

acknowledged in

presence of E. K. Bowen

and J. T. Baker

26<sup>th</sup> Day of May 1904

E. K. Bowen



An instrument of writing purporting to  
be the last Will and Testament of Stephen  
S. Surgenor deceased was probated in  
open court by the Subscribing witnesses  
E. D. Brown and H. T. Baker and ordered  
by said Court to be entered of record:

James C. Denton Clerk of Court

State of Tennessee  
Hancock County

I John Pursey clerk of the County  
Court in and for the State and County  
aforesaid do hereby certify that the  
foregoing is a true and perfect copy  
of the last will and Testament of Stephen  
S. Surgenor and the order of Court probating  
the same which will was proven and  
ordered by the Court at the September  
term 1904. to be entered of record,  
as the same appears of record in my  
office

Witness my hand and official seal at  
office this 17th day of September 1904  
John Pursey Clerk



State of Tennessee  
Hancock County }

I James C. Overton Chairman of  
the County Court in and for the County  
of Hancock and State of Tennessee do  
hereby certify that John Pursey is  
the Clerk of the County Court of  
said County of Hancock and as such  
has full control of the records of  
said Court and that his signature to  
the foregoing Certificate is genuine.  
Witness my hand at office this 17th  
day of September 1904

James C. Overton Chairman Court

This paper is further excused to ~~as~~ because in admissible  
as evidence, from the fact that it is not authenticated in the  
manner in which a transcript from the records of a Court  
of another state, is required by the Statute, to be authenticated  
to be used as evidence in this State and is not admissible.

By J. C. Overton, Secy. of Court.



# Judgment Lien Docket

(# 4 n. 83).

Date of Judgment.	By what Court Rendered	Time of Docketing	Names and Description of Parties	Debt, Damages, Interest <sup>and</sup> Costs	Amount <sup>and</sup> Date of Credits.
Mar. 10, 1905.	Circuit Court for Lee County.	Apr. 27, 1905.	Powells Valley Bank, Plff. vs. E. N. Brickey, Floyd Kern, Susie Kern and H. C. Hygal, survivors of themselves and S. S. Sugner, deceased, Deft.	Judgment for (\$82.50) Eighty-Two dollars and fifty cents, with legal interest thereon from the 23 <sup>rd</sup> day of June, 1904, till paid, waiving homestead exemption, and \$9.75 - Costs, Clerk \$5.25 Atty. \$2.50; Sheriff \$2.00.	



Know all Men by these Presents, That we, *A. B. Linsay, S. B. Patet,*  
*W. D. Linsay & R. Surgeon.*

are held and firmly bound unto the Commonwealth of Virginia, in the sum of *One*  
*hundred* Dollars, to the payment whereof, well and truly to be made to the  
said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors  
and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit  
of our exemption as to this obligation, and any claim or right to discharge any liability to the Com-  
monwealth arising under this bond or by virtue of said office, post or trust, with coupons detached  
from the bonds of this State. Sealed with our seals, and dated this *12th* day of  
*December*, one thousand nine hundred *and four.*

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas *the above named*  
*A. B. Linsay & Fletcher* have instituted a suit  
in chancery in the circuit Court of Lee County Virginia  
against *and in which*  
suit security for costs has been required, *and if the*  
said *A. B. Linsay & Fletcher* shall well  
and truly pay all costs that may be awarded against  
them in said cause together with the fees that may  
become due the officers of the Court, *then this ob-*

then this obligation to be void; or otherwise to remain in full force and virtue.

*A. B. Linsay*

*S. B. Patet*

*W. D. Linsay*

*S. R. Surgeon*

In the \_\_\_\_\_ Court of the \_\_\_\_\_ of \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_  
190\_\_\_\_\_

This bond was executed and acknowledged in open Court by the obligors and ordered to be recorded,

the suret \_\_\_\_\_ therein having first justified on oath that \_\_\_\_\_ estate, after the payment of all  
just debts, and those for which he \_\_\_\_\_ bound as security for others and expect to have to pay \_\_\_\_\_  
worth the sum of \_\_\_\_\_ dollars, over and above  
all exemptions allowed by law.

Teste:

Clerk.



A. B. Lerasay et al

to

} BOND  
for costs.

Commonwealth.



say, who suggests that the bond executed by A. R. Surgener, Administrator of S. S. Surgener, deceased, is not in a sufficient penalty and that the sureties therein are not worth the amount of said bond, it is ordered that said A. R. Surgener be required to appear here on the first day of the next term to show cause if any he can, why he should not and with sureties sufficient in law as such Administrator. And the cause is continued.

A Copy-Teste:

W. T. Ewing Clerk.



A. B. Livesay et al  
vs. In Chancery.

Mariah Livesay et al

A. M. Goins.

Executed on Jan 10  
1905, by delivering  
a copy of the writ  
to A. M. Goins.

P. M. Bad  
S. L. C.



A. B. Livesay, et al,

Plaintiffs.

vs.

In Chancery.

Mariah Livesay, et al,

Defendants.

The plaintiffs by their counsel except to the report of Commissioner Goins in this case as to his ascertainment of the advancements made by S. S. Surgener, deceased/ to his heirs in his life time, and as to how the heirs should be equalized, because the finding of the commissioner is contrary to the law and the evidence.

Ans & Noel for Defts.



A. B. Livesay *et al*

Plaintiff.

vs.

In Chancery

Mariah Livesay, et al,

Defendants.

The plaintiffs by thier counsel, except to the report of Comi  
missioner A. M. Goins, in this cause as to his ascertainment of the  
advancements made by S. S. Surgener, deceased, to his heirs in his life  
time, and as to how the heirs should be equalized. The Commissioner  
undertakes to equalize by giving out of the fund in the hands of the  
administrator and James W. Orr, Commi~~ss~~ioner, as follows:

TO A. B. Livesay, plaintiff,	\$150.00
" Almira Fletcher, "	150.00
" S. R. Surgener, "	200.00
" Sarah Roberts "	200.00
" David Surgener "	150.00

When the evidence that was legitimate<sup>ly</sup> before the Commissioner  
shows conslusively that A. B. Livesay, Almira Fletcher, nor Mary A.  
Livesay, their mother, have ever received one cent, which fact was admit-  
ted by all parties, and also shows that S. R. Surgener received \$500.00;  
that Sarah Roberts received more than her share, and that S. M. Surgener  
the father of David Surgener received about \$400.00. Yet the commissioner  
puts the plaintiffs but little above S. R. Surgener and Sarah Roberts. *in this dis-  
tribution.*  
After these heirs are thus equalized the Commissioner than puts them  
on equality with Nancy E. Livesay, who, the evide~~n~~ce shows has received  
at least \$700.00 in land, and interest released &c. Thus treating the  
plaintiffs as being on an equality with Nancy E. who has received  
\$700.00, and on an equality with S. R. Surgener who has (when he gets the  
\$200.00) likewise received \$700.00, and on an equality with Sarah Roberts  
who has already received more than her part; and on an equality with  
David Surgener, who ( when he gets the \$150.00) with his father, will have  
received at least \$550.00, while the plaintiffs when they get their  
\$150.00 each will have received only \$300.00. This is, as they conceive  
\nequality and not equality. As to Mariah Livesay, she has received her



part, and she is very properly left out. She in her answer does not propose to come in. Nancy E. Livesay should have been treated in the same manner, or at least as having received \$700.00. A. R. Surgener having answered and claimed to have received no advancements in the lands conveyed to him and his wife, and the evidence showing conclusively that he did, should have been compelled to bring into hotchpot, the amount received by him over and above his share, which is proven to be some where from \$1000.00 to \$1500.00. This we understand to be the law that an heir in a suit to ascertain advancements and equalize may stand out and keep what he has, but if he comes into the suit and denies <sup>received</sup> having his portion, and the matter is litigated, and it turns out that he has received more than his share he must bring into the estate and account for the overplus. Se Code, Sec. 2561. It is respectfully submitted that the standard should have been fixed at \$700.00 the amount received by Mariah Livesay and Nancy E. Livesay each, and that A. R. Surgener should have been treated as having received that sum outside of the advancements to him in lands conveyed to him and his wife, which last amount as proved should be decreed against him and brought into the estate, that S. R. Surgener should have had \$200.00 to bring him up., and Sarah Roberts \$200.00 to <sup>bring</sup> her up; David Surgener \$300.00 to bring him up and the plaintiffs \$700.00 to bring them up. But if the fund should not be sufficient to equalize on the \$700.00 basis, then the basis of \$500.00 (S. R. Surgener's standing) should be adapted and all except A. R., Mariah, Sarah and Nancy E. brought up to that amount, and thus equality obtained. The commissioner seems to have based his conclusion largely on what he imagines to be a well attempted to be made by S. S. Surgener, deceased.

It is respectfully submitted that no will was ever made by Mr. Surgener, according to the laws of Virginia, in which State he was domiciled at the time of his death. It is true a paper purporting to be his will was offered for probate in your honor's court, but was refused, and that this paper, or some other, was probated illegally in the state of Tennessee. It could not have been legally probated there because he was



3.

domiciled in Virginia at the time of his death/ but of all this the commissioner had no legal evidence before him. A Paper purporting to be an authenticated Copy of such will probated in Tennessee was offered in your honor's court for probate, but was refused, and a copy of your honor's order refusing same was before the commissioner. And the same paper offered in your honor's court was filed before the commissioner for same purpose, but the same was strenuously excepted to. (See exception endorsed thereon) as being inadmissible for any purpose. The original paper, (attempted will) was never produced before the commissioner, and nothing else could have been used by him, even as an admission or statement by Mr. Surgener, as evidence in any manner, and his findings in the cause as to advancements should have been based on the evidence before him outside of said paper. We insist that the matter of advancements and equalization should be corrected by the court, or re-committed to the commissioner with instructions as to the law in regard to the ~~duty of~~ an heir being compelled, to bring into the estate over advancements received by him or her, as we and the commissioner differ as to the law on the subject.

*Or & Vacl for Plffs.*



A. B. Levasy et al.

vs Exceptions to Court

3 Going before

Maria Levasy et al.

---



In the Clerk's Office of the Circuit Court of the County of  
Kee on the 18<sup>th</sup> day of October 1904.

A. B. Levary et als

Plaintiff S,

against

Mariah Levary et al

Defendants

The object of this suit is to Settle and distribute and  
partition The estate of S. S. Surquer, de-  
ceased, among his heirs, and to ascer-  
tain The advancements made by said  
decedent in his lifetime to his said  
heirs and to equalize them in The  
distribution and partition of said  
estate.

And an affidavit having been made and filed that the defendant Mariah Levary, S.R.  
Surquer and David Surquer are  
not residents of the State of Virginia, it is ordered that They do appear here within fifteen days  
after due publication hereof, and do what may be necessary to protect Their interest in this suit. And  
it is further ordered that a copy hereof be published once a week for four weeks in the Wise News,  
and that a copy be posted at the front door of the court-house of this County  
on the first day of the next term of the said Court.

A copy—Teste:

Orer & Noel p. q.

T. H. T. Hewing Clerk.  
By M. C. Hawkey D.C.



A. B. Levasy et al

vs. {

ORDER OF  
PUBLICATION.

Mariah Levasy et al

Virginia, Lee County, to-wit:

J. H. C. P. Ewing, Clerk of The  
Circuit Court for the County of  
Lee, in the State of Va. do  
certify that I posted a  
true copy of the within  
C.P. at the front door  
of the Court-house on  
this the 18<sup>th</sup> day of Oct.  
1904.

Given under my hand  
this the 18<sup>th</sup> day of Oct.  
1904.

J. H. C. P. Ewing Clerk.  
By M. E. Hanney D.C.



In the Clerk's Office of the Circuit Court of the County of  
Lee.

A. B. Leuasy et als.

Plaintiffs,

against

Mariah Leuasy et al

Defendants.

This day James W. Orr personally appeared  
before me M. E. Hawary deputy for J. V. Ewing Clerk of the said Court,  
and being duly sworn, made oath that Mariah Leuasy & R. Surgenor &

David Surgenor

defendants in the said suit are not residents of the State of Virginia,

Given under my hand as Clerk of the said Court, this 17<sup>th</sup> day of October 1904.

M. E. Hawary D. Clerk.



*A. B. Levasy et al*

vs.

{

AFFIDAVIT FOR ORDER

OF

PUBLICATION.

*Mariah Levasy et al*

*Cur & Noel* p. q.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *A. R. Surgenor, Admin. of the es-*  
*tate of S. S. Surgenor, Dec'd, R. G. Livezey, and*  
*S. C. Surgenor*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on  
the *1<sup>st</sup>* Monday in *September*, 190*5*, to answer <sup>*an amended*</sup> a bill in chancery exhibited against *them*  
*in our said court by A. B. Levasy & Elmina*  
*Fletcher*

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *23*  
day of *August*, 190*5*, and 1*30<sup>th</sup>* year of the Commonwealth.

A Copy, Teste:

*H. C. T. Ewing*, Clerk.

\_\_\_\_\_, Clerk.



A. B. Levasy & Edwin  
Fletcher

VS

}

SUBPOENA  
IN  
CHANCERY.

A. R. Surgenor Admin.  
et al.

Ans & vol. p. 9

To 1st - 1st Sept. Rules.  
Lee Ciseril - Court.  
1905

Executed Sept 2nd 1905.  
W. A. Owens D.S.  
For Mr. Ball S.D.C.



The Commonwealth of Virginia,

To the Sheriff of the County of <sup>Wise</sup> ~~Lee~~, Greeting:

WE COMMAND YOU, That you summon Mariah Levasy,  
Sarah Roberts, Nancy Levasy, S.R. Surgeur,  
A.R. Surgeur, in his own right & as ad-  
ministrator of S.S. Surgeur, deceased, David  
Surgeur and Elizabeth Surgeur,

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be  
held for the said court, on the 1<sup>st</sup> Monday in Nov., 1904, to answer a  
bill in chancery exhibited against Them in our said court by

A. B. Levisy and Almira Fletcher

And have then there this writ. Witness, W. L. Ewing, Clerk of our said Court,  
at the court-house, the 17 day of Oct., 1904, and in the 12 9<sup>th</sup>  
year of the Commonwealth.

A copy, Test:

W. L. Ewing, Clerk.  
By M. E. Hanary D.C.

W. L. Ewing, Clerk.  
By M. E. Hanary D.C.



VS. { SUBPEONA  
IN CHANCERY.

p. q.

To Rules.

Court.

For Sarah Roberts.



The Commonwealth of Virginia,

To the Sheriff of the County of <sup>Will</sup>~~Lee~~ Greeting;

WE COMMAND YOU, That you summon Mariah Levisay,  
Sarah Roberts, Nancy Levasy, S.R. Surgeur,  
A.R. Surgeur, in his own right and as ad-  
ministrators of S.S. Surgeur, deceased, David  
Surgeur & Elizabeth Surgeur

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be  
held for the said court, on the 1<sup>st</sup> Monday in Nov., 1904, to answer a  
bill in chancery exhibited against Them in our said court by

A.B. Levisay and Almira Fletcher

N. H. Ewing  
And have then there this writ. Witness, H. B. HUNSEY, Clerk of our said Court,  
at the court-house, the 17 day of Oct., 1904, and in the 12 9<sup>th</sup>  
year of the Commonwealth.

N. H. Ewing, Clerk.  
By M. E. Hanary D.C.



---

A. B. Levasy et al

vs.

}

SUBPOENA  
IN CHANCERY.

Mariah Levasy et al

---

Or & Noel p. q.

---

To 1st Nov. Rules.

Lee Circuit Court.

---

I don't know  
any thing about  
this list of  
witnesses at all  
H. M. Collier to



The Commonwealth of Virginia,

To the Sheriff or any Constable of the County of Lee,--Greeting:

We command you that you summon O.P. Linn, M.D. Linn,  
Marion Linn, S.B. Sargent Henry Baker  
to appear before the undersigned,  
Special Commissioner, at his office in the town of Jonesville, on  
the 11th day of January, 1904, to testify, and the truth to say on  
behalf of the plaintiff in a certain matter of controversy in our  
said court depending and undetermined in a certain matter of contro-  
versy in our said court depending and undetermined, between A.B. Lis-  
saret al., plaintiffs, and Elizabeth Surgner at al., defendants, and  
now pending before me as said Commissioner. And this they shall in  
no wise omit under the penalty of \$20.00, and have then there this  
writ.

Witness, A.M. Goins, Special Commissioner, at his office, this  
January 10th, 1905, in the 129 year of the Commonwealth.

A.M. Goins,  
Special Commissioner.



TRANSFER DEED

Witness, A. M. H.  
January 10th, 1901.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *Mariah Levasy, Sarah Roberts, Nancy Levasy, S. R. Surgenor, A. R. Surgenor*, in his own right and as administrator of *S. S. Surgenor deceased, David Surgenor, & Elizabeth Surgenor*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on the *1st* Monday in *November* 190*4*, to answer a bill in chancery exhibited against *them* in our said court by

*A. B. Levasy & Minnie Fletcher*

And have then there this writ. Witness, *A. B. Levasy*, Clerk of our said Court, at the court-house, the *7th* day of *October*, 190*4*, and in the *129th* year of the Commonwealth.

*A. B. Levasy*, Clerk.  
By *M. C. Kanawha D.C.*



A. B. Levasy et al

VS. { SUBPEONA  
IN CHANCERY.

Mariah Levasy et al

Or & Noel p. q.

To 1st Nov. Rules.

Circuit Court.

Executed by delivering a copy  
of the within notice to the  
said A. B. Levasy et al. Mary  
Levasy Elizabeth Levasy  
the Oct 25 1904  
G. L. McPherson D. C.  
Shreveport La

Service is hereby acknowledged for - Marsh. Roberts.  
this 25th Nov. 1904  
W. H. City atty



To A.B. Levisay and Almira Fletcher; non resident plaintiffs,

Take notice that I shall, on the 4th day of April, 1904,  
at the law office of E.W. Pennington, in the town of Pennington Gap, Va.,

between the hours of 8 A. M. and 8 P. M., on that day, proceed to take the depositions  
of myself and others, to be read in evidence in my behalf,  
in a certain suit depending in the Circuit court for the County  
of Lee wherein you are plaintiff  
and myself and others are defendants.

and if from any cause, the taking of the said depositions be not commenced on that day, or, if commenced, be not concluded on that day, the taking of the same will be adjourned and continued from day to day, or from time to time, at the same place and between the same hours, until the same shall be completed.

Very respectfully,

*Nancy E. Levisay*  
By Pennington Bros. Attys.



Virginia, Lee County to wit:

I, M.E. Flanary deputy clerk for the Circuit court  
for Lee County, do hereby certify that R.L. Pennington this  
day made oath before me that he delivered a true copy of  
the within notice to J.W. Orr, Atty. for A.B. Levisay  
and Almira Fletcher<sup>on</sup> This March 27, 1905.

M.E. Flanary D.C.

FORM NO. 404.

*A.B. Levisay*

NOTICE TO TAKE  
DEPOSITIONS.

*advs.*

*A.B. Levisay*

*A.B. Orr*

*advs.*



# CERTIFICATE OF Order of Publication.

*A. B. Levasy* Plaintiff.  
*vs.*  
*Mariah Levasy* Defendant.  
Fee \$ 7<sup>00</sup> Paid by \_\_\_\_\_

I, W. H. EADS, Editor of The Wise News, a newspaper published in the Town of Gladeville, County of Wise, and State of Virginia, do hereby certify that the attached Order of Publication was duly published once a week for four successive weeks in The Wise News, beginning on the 20th day of October, 1904

*W. H. Eads*  
*Ed*

## ORDER OF PUBLICATION.

VIRGINIA—In the Clerk's Office of the Circuit Court of the County of Lee on the 18th day of October, 1904.

A. B. LEVASY, et al Pltfs.  
against, In Chancery.  
Mariah Levasy, et al Dfts.

The object of this suit is to settle and distribute and partition the estate of S. S. Surgener, deceased, among his heirs, and to ascertain the advancements made by said decedent in his lifetime to his said heirs and to equalize them in the distribution and partition of said estate.

And an affidavit having been made and filed that the defendants Mariah Levasy, S. R. Surgener and David Surgener are not resident of the State of Virginia, it is ordered that they do appear here within fifteen days after due publication hereof, and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in The Wise News and that a copy be posted at the front door of the court-house of this county on the next Rule day of the said Court.

A copy—Teste:

H. C. T. EWING, Clerk.

By M. E. Flanary, D. C.

Orr & Noel, p. q. 10-20-4t.



CERTIFICATE OF  
Order of Publication,

*A.B. Leary* Plaintiff.

vs.

*Marion Leary* Defend't.

Fee \$ *7 60* Paid by \_\_\_\_\_